

1 STATE OF MINNESOTA DISTRICT COURT
2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT
3 - - - - -

4 The State of Minnesota,
5 by Hubert H. Humphrey, III,
6 its attorney general,
7 and
8 Blue Cross and Blue Shield
9 of Minnesota,

10 Plaintiffs,

11 vs. File No. C1-94-8565

12 Philip Morris, Incorporated, R.J.
13 Reynolds Tobacco Company, Brown &
14 Williamson Tobacco Corporation,
15 B.A.T. Industries P.L.C., Lorillard
16 Tobacco Company, The American
17 Tobacco Company, Liggett Group, Inc.,
18 The Council for Tobacco Research-U.S.A.,
19 Inc., and The Tobacco Institute, Inc.,

20 Defendants.

21 - - - - -

22 CONTINUED DEPOSITION OF
23 THOMAS E. HAMM, JR., D.V.M., Ph.D.

24 VOLUME II

25 (PAGES 333 - 605)

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1 (The following is the continued deposition
2 of THOMAS E. HAMM, JR., D.V.M., Ph.D., taken pursuant
3 to notice, at the offices of Dorsey & Whitney,
4 Pillsbury Center South, 220 South Sixth Street,
5 Minneapolis, Minnesota, commencing at approximately
6 9:00 o'clock a.m., September 17, 1997.

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1 I N D E X
2 Thomas E. Hamm, Jr., D.V.M., Ph.D.
3 Adverse Examination by Mr. Gill 337 - 603
4
5

6 P L A N T I F F S '
7 D E P O S I T I O N E X H I B I T S
8 3517 - REMARKD - 12/22/71 RJR memo 473
9 3338 - 2/10/72 memo 485
10 3339 - CTR handwritten memo 491
11 3518 - REMARKED - 2/20/74 Homburger memo 544
12 3341 - Philip Morris 1/10/78 memo 596
13 3342 - Felton document 598
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1 ADVERSE EXAMINATION

2 BY MR. GILL (CONT'D):

3 Q. Good morning, Dr. Hamm.

4 A. Good morning.

5 Q. During your consulting work as a potential
6 witness in the tobacco case did you contact anybody
7 who was with TIRC or CTR at the time that the
8 documents were being created that you reviewed?

9 A. No, I did not.

10 Q. Do you know any of those individuals whose names
11 appear in these documents that you've reviewed? Do
12 you know them personally?

13 A. Personally? Not during those early years or the
14 inhalation studies, but I do know personally some of
15 the current members of the scientific advisory board.

16 Q. Do you know any of the current employees of CTR?

17 A. I don't think so, no.

18 Q. Do you know anybody that you believe was an
19 employee of CTR or TIRC at any time?

20 A. Other than current members of the scientific
21 advisory board -- I've known many of them by
22 reputation, but I have not known any of them what I
23 would call personally.

24 Q. I asked about employees. Is it your
25 understanding that members of the scientific advisory

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1 board are employees of CTR?

2 A. Just as when I'm on a scientific advisory board
3 for the government that day I'm considered an
4 employee, so I viewed it in that sense, in the broad
5 sense.

6 Q. How about the in sense of someone who draws an
7 annual salary?

8 A. They certainly are an employee.

9 Q. The members of the scientific advisory board
10 draw annual salaries from CTR as you understand it?

11 MR. ALLINDER: Objection to the form.

12 THE WITNESS: That's not what I said.

13 I assume they're compensated for some honorary on
14 some of those meetings, but I don't know how they're
15 compensated.

16 BY MR. GILL:

17 Q. Individuals that fall into that category
18 normally are not employees of the entity for which
19 they provide consulting services, are they?

20 A. You can define it however you wish. As I said,
21 when I go to the Cancer Institute in a similar
22 capacity I am definitely an employee of the
23 government for that day. It's written in the orders
24 that are sent to me and I have to conduct myself that
25 way.

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1 I can't go lobby or visit someone on the hill
2 and so forth, so I only viewed it in that way.

3 Q. Now, have you ever contacted in connection with
4 your consulting work on tobacco cases any of the
5 researchers whose names have appeared in any of the
6 documents that you've reviewed?

7 A. I have not.

8 Q. Do you know any of those researchers personally?

9 A. I know -- I've met and talked to Carol Henry and
10 Dick Kouri. And there may be others. As scientists
11 we kind of know each other, but none of these are
12 close personal friends of mine.

13 Q. Are you aware of the reputations of Drs. Henry
14 and Kouri in the scientific community?

15 A. Somewhat.

16 Q. Do both of those doctors have a good reputation
17 as scientists?

18 A. They do.

19 Q. Now, as you were looking at documents and
20 eventually preparing written reports in the Minnesota
21 case and other cases were you focusing on the
22 potential conflict of interest that existed between
23 the management of CTR and the tobacco industry?

24 MR. ALLINDER: Object to the form.

25 THE WITNESS: Would you repeat the

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1 question.

2 MR. GILL: Why don't you read it back.

3 (Record read.)

4 THE WITNESS: I don't know that there
5 is such a conflict and I wasn't in my looking -- I've
6 been looking more at the scientific data surrounding
7 the research.

8 BY MR. GILL:

9 Q. So as you sit here today you don't know whether
10 there was a conflict of interest; I take it you
11 weren't focusing on conflict of interest as you
12 reviewed those documents, true?

13 MR. ALLINDER: Object to the form.

14 Asked and answered.

15 THE WITNESS: I don't really
16 understand your question in that I don't view that
17 there was a conflict of interest so it would be
18 difficult for me to focus on it I guess.

19 BY MR. GILL:

20 Q. You don't recognize that there would be a
21 conflict of -- let me put it this way: It's never
22 occurred to you, Dr. Hamm, that there would be a
23 conflict of interest if the management of CTR
24 interpreted research sponsored by CTR as establishing
25 a causal link between smoking and lung cancer or

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1 other diseases?

2 MR. ALLINDER: Object to the form.

3 THE WITNESS: I -- and I'm beginning
4 to understand your question a little better now in
5 that as I was reviewing all of the documents, I'm
6 always -- as I'm looking at science I'm always
7 looking at, is there any kind of conflict here and is
8 there some reason why that may affect the results.

9 So everything I look at I kind of look for
10 that the data speak for themselves, but I'm looking
11 for is there any misinterpretation of the data,
12 misuse of the data, changing of the data, those kinds
13 of things.

14 BY MR. GILL:

15 Q. Well, in addition to those types of things did
16 you focus on the reality that any statement by the
17 management of CTR linking the CTR sponsored research
18 to smoking and disease would adversely affect the
19 economic interest of the tobacco companies that owned
20 CTR?

21 MR. ALLINDER: Object to the form.

22 Assumes facts not in evidence.

23 THE WITNESS: I view as a scientist
24 and I view that everything I've seen in looking
25 through these documents that these scientists were

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1 attempting to find the truth, and I don't view that
2 that's any kind of conflict or any problem for an
3 organization because science will -- you know if a
4 bad paper is printed, another paper eventually will
5 correct that.

6 So science is self correcting and that's in
7 the interests of any company. So any industry or any
8 company is benefited by good science.

9 BY MR. GILL:

10 Q. Did it occur to you, Dr. Hamm, that if the truth
11 turned out to be that smoking caused lung cancer and
12 other diseases that would adversely affect the
13 economic interests of the tobacco companies that own
14 CTR?

15 MR. ALLINDER: Object to the form.

16 THE WITNESS: It's such a global
17 question. The kind of research -- the research moves
18 in small increments and everybody wants to know the
19 truth, and it isn't going to do anybody any good to
20 try to do it the other way.

21 So in my view, they're going to have to
22 deal with those results, whatever they are.

23 BY MR. GILL:

24 Q. So from your perspective as a scientist
25 reviewing all these documents, if CTR had publicly

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1 stated that research funded by it had established a
2 link between smoking and lung cancer you believe that
3 would have been a good thing for the industry?

4 MR. ALLINDER: Object to the form.

5 BY MR. GILL:

6 Q. Is that correct?

7 MR. ALLINDER: Misstates his
8 testimony.

9 THE WITNESS: What I'm saying is that
10 what CTR had to do and what they're being paid to do
11 and which it would be no use for them to do anything
12 else was to do good science and report the science
13 exactly for what it was.

14 BY MR. GILL:

15 Q. But, Dr. Hamm, I'm trying to understand your
16 state of mind with regard to whether you would see
17 information that established a link between smoking
18 and lung cancer as good news for the tobacco
19 companies or bad news. Do you have an opinion as to
20 whether it would be one or the other?

21 MR. ALLINDER: Object to the form.

22 THE WITNESS: As I've tried to state
23 in as many ways I can, I don't view science as good
24 or bad news. Science speaks for itself.

25 BY MR. GILL:

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1 Q. So from your perspective, Dr. Hamm, you're
2 simply not capable of interpreting whether science
3 establishing a causal link between smoking and lung
4 cancer would have any consequences to the tobacco
5 industry?

6 MR. ALLINDER: Object to the form.

7 THE WITNESS: I'm as capable of making
8 those interpretations as anyone.

9 BY MR. GILL:

10 Q. Now that we understand you are capable of making
11 that interpretation, do you believe that statements
12 from CTR indicating that research funded by it had
13 established a causal link between smoking and lung
14 cancer would have benefited the tobacco companies or
15 adversely affected the tobacco companies?

16 MR. ALLINDER: Objection to the form.

17 Asked and answered.

18 THE WITNESS: I think good science
19 always benefits an industry and a company, and it
20 should be reported exactly as it occurs and exactly
21 for what it is.

22 BY MR. GILL:

23 Q. So if the good science was that smoking caused
24 lung cancer, that would be information that as you
25 see it would benefit the tobacco companies, true?

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1 MR. ALLINDER: Object to the form.

2 THE WITNESS: Good science properly
3 reported always benefits companies, otherwise there
4 is no use in doing science.

5 BY MR. GILL:

6 Q. And from your perspective, Dr. Hamm, it would be
7 a strange thing if the management of tobacco
8 companies saw that situation any differently, true?

9 MR. ALLINDER: Object to the form.

10 THE WITNESS: It doesn't make any
11 sense for any intelligent person to try to do bad
12 science.

13 BY MR. GILL:

14 Q. And you would be surprised if the tobacco
15 companies were of the view that information
16 establishing a causal link between smoking and health
17 would inure to their economic disadvantage?

18 MR. ALLINDER: Object to the form.

19 THE WITNESS: You do good science so
20 you'll have the answer. I don't know that, in fact,
21 that might have helped them.

22 They may have been able to modify their
23 product, they may have been able to do something
24 different based on this science that would have made
25 them much more profitable.

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1 BY MR. GILL:

2 Q. At least that's your assumption, true?

3 MR. ALLINDER: Object to the form.

4 THE WITNESS: Yes.

5 BY MR. GILL:

6 Q. Now, given the fact that -- now, let me through
7 another hypothetical to you. If the truth turned out
8 to be that smoking did not cause lung cancer or any
9 other disease, do you have an opinion whether the
10 tobacco companies would have considered that good
11 news, bad news or news of total indifference?

12 MR. ALLINDER: Object to the form.

13 THE WITNESS: I have the same opinion,
14 that good science reported properly is what people
15 are trying to do.

16 It's so much harder to prove a negative,
17 however that it's almost impossible, so it would be
18 much more difficult to prove the negative than it
19 would be to prove a positive.

20 BY MR. GILL:

21 Q. But if it could be proved that smoking did not
22 cause lung cancer or other diseases you would see
23 that as also benefiting the tobacco companies?

24 MR. ALLINDER: Objection to the form.

25 Asked and answered.

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1 THE WITNESS: As I said, good science
2 properly reported is always a benefit to any company.

3 BY MR. GILL:

4 Q. So from your perspective as a scientist being
5 paid to review a lot of documents and form opinions
6 with respect to whether or not the management of CTR
7 acted in concert with tobacco companies to suppress
8 information establishing the causal link between
9 smoking and health, it's your perspective that no
10 possible conflict of interest could arise between CTR
11 and the tobacco companies as to that issue, true?

12 MR. ALLINDER: Object to the form.
13 Misstates the testimony.

14 THE WITNESS: That's not what I said.

15 BY MR. GILL:

16 Q. I understand --

17 A. May I answer?

18 Q. -- if that's --

19 MR. ALLINDER: Do you withdraw your
20 question?

21 MR. GILL: Yes, if that's not what he
22 said.

23 BY MR. GILL:

24 Q. If reports by CTR that the scientific truth was
25 that smoking caused lung cancer would be of benefit

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1 to the tobacco companies it would also be a benefit
2 to the public, would it not?

3 MR. ALLINDER: Object to the form.

4 THE WITNESS: Good science benefits
5 everybody.

6 BY MR. GILL:

7 Q. And so if the reporting of that truth that
8 smoking caused lung cancer would benefit both the
9 public and the tobacco companies there would be no
10 conflict for CTR with respect to reporting such
11 information, true?

12 MR. ALLINDER: Object to the form.

13 THE WITNESS: There are always
14 conflicts and there are always people who succumb to
15 these conflicts, and when I review reports I do look
16 for any evidence that that is, in fact, occurring.

17 BY MR. GILL:

18 Q. But if news that smoking established -- strike
19 that. If news that smoking caused lung cancer would
20 be of benefit to tobacco companies what scenario do
21 you see where CTR might publicly report some news
22 that could hurt tobacco companies?

23 MR. ALLINDER: Object to the form.

24 THE WITNESS: Good science properly
25 reported I don't think hurts anybody.

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1 BY MR. GILL:

2 Q. And so what you're telling me is that from your
3 perspective if CTR reported good science there would
4 be no potential for any conflict of interest between
5 the tobacco companies on the one hand and the smoking
6 public on the other, true?

7 MR. ALLINDER: Object to the form.

8 Asked and answered. Misstates his testimony.

9 THE WITNESS: There are always
10 conflicts of interest and there are always people who
11 succumb to conflicts of interest.

12 BY MR. GILL:

13 Q. What potential conflicts of interest that you've
14 identified that may have affected the conduct of the
15 management of CTR?

16 MR. ALLINDER: Object to the form.

17 THE WITNESS: Well, there are many,
18 but the thing I'm focusing on in my area of expertise
19 is the area of animal based research.

20 So what I look for is is there any evidence
21 that any data has been changed, has any
22 interpretation not been supported by the data and
23 those kinds of things. So those are the things I
24 mainly focus on.

25 BY MR. GILL:

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1 Q. How would that be a conflict of interest?

2 MR. ALLINDER: Object to the form.

3 THE WITNESS: Well, the conflict of
4 interest may lead to those activities.

5 BY MR. GILL:

6 Q. What conflicts of interest do you see
7 potentially?

8 A. Someone may view that their livelihood depends
9 on a result.

10 Q. What result?

11 A. Any result.

12 Q. Can you think of any such result?

13 A. They might even interpret it differently. Some
14 people -- you may have people think a positive result
15 is what people are looking for and other may think a
16 negative result is what people are looking for.

17 Q. Which people, looking for what?

18 MR. ALLINDER: Object to all of this
19 line of questioning.

20 THE WITNESS: I think you're going to
21 have to ask me a question I don't know what you're
22 trying to have me answer.

23 BY MR. GILL:

24 Q. Well, you teach a course in ethics that deals
25 with conflict of interest, correct?

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1 A. Partially.

2 Q. Well, a conflict of interest has to be some
3 information or conduct that would have opposite
4 impacts on at least two different intents; is that a
5 fair statement?

6 MR. ALLINDER: Object to the form.

7 THE WITNESS: I don't think
8 necessarily it has to have opposite effects.

9 BY MR. GILL:

10 Q. Let me try and make it more simplistic. Is it
11 your understanding of a conflict of interest that
12 someone or some entity may find itself in a position
13 where if it does a certain thing that thing may be a
14 good thing for one other entity, but a bad thing for
15 a second other entity?

16 MR. ALLINDER: Object to the form.

17 THE WITNESS: That's one possible
18 conflict. There are other possibilities.

19 BY MR. GILL:

20 Q. Let's try to stick just with that narrow area of
21 the subject of conflict of interest, all right?

22 A. Would you repeat it please then?

23 Q. All right. The area that someone might find
24 themselves in a situation where what they do may work
25 to the advantage of one entity, but at the same time

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1 to the disadvantage of another entity.
2 A. Okay.
3 Q. Do you have that in mind?
4 A. I do.
5 Q. And in a situation where the entity or the
6 person engaging in the conduct supposedly has
7 loyalties to both of the entities, that might be
8 affected either well or badly by the conduct of the
9 actor. Do you have that in mind?
10 A. It was pretty long. Could I have it repeated?
11 MR. ALLINDER: You might want to have
12 it read back.
13 BY MR. GILL:
14 Q. Well, as a professor of ethics, Dr. Hamm, --
15 A. Let me correct that. I'm not really a professor
16 of ethics. I happen to teach an ethics course.
17 Q. As someone who has had the advantage of having
18 taught an ethics course -- you wouldn't expect that
19 most people in the general population have taught
20 ethics courses, have you?
21 MR. ALLINDER: Object to the form.
22 THE WITNESS: No. I'm almost certain
23 they haven't.
24 BY MR. GILL:
25 Q. You would be among a relatively small number of
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1 adults in our population that has taught ethics,
2 correct?

3 MR. ALLINDER: Object to the form.

4 THE WITNESS: It would depend on what
5 you call a small number.

6 BY MR. GILL:

7 Q. Less than one percent of the population?

8 MR. ALLINDER: Object.

9 BY MR. GILL:

10 Q. If we have two hundred fifty million people in
11 the country would you assume that somewhat less than
12 two point five million of us have taught ethics?

13 MR. ALLINDER: Object to the form.

14 THE WITNESS: I could see that.

15 BY MR. GILL:

16 Q. And certainly less than two point five million
17 have taught ethics to college and graduate courses.

18 MR. ALLINDER: Object to the form.

19 THE WITNESS: That's probably
20 correct.

21 BY MR. GILL:

22 Q. And now as someone who's had the advantage to
23 that experience, are you able to articulate any type
24 of a definition of conflict of interest that involves
25 conduct benefiting one entity, but adversely

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1 affecting another entity?

2 A. Can I enumerate any type? That's your
3 question?

4 Q. Pretend you're up there teaching the class and
5 I'm a student and I don't have the foggiest notion in
6 my mind about what a conflict of interest might be
7 and you're trying to explain it to me.

8 A. Well, first you've already narrowed me into one
9 specific type that happens to fit what you're talking
10 about today.

11 Do you want me to go back now to other types as
12 if I am teaching somebody about conflicts of
13 interests?

14 Q. No. Let me just start me out on this one type
15 and perhaps if I can grasp the concept with this one
16 type we will --

17 A. If you are working for a company and you decide
18 that they want a certain kind of data, and if that
19 kind of data is not occurring and it could mean
20 you'll lose your job because the company may
21 disappear, then that would be a conflict of interest.

22 Q. I've got my employer on the one hand who is
23 affected by my conduct, correct?

24 A. And you have your source of funding that's
25 affected by the conduct.

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1 Q. My source of funding? What if my source of
2 funding is my employer?

3 A. Then you've got less of a conflict of interest.

4 Q. Can you come up with a situation? I've got --
5 in your hypothetical I've got one party who's
6 interested in my conduct. Who's the other?

7 MR. ALLINDER: Object to the form of
8 the question. Dick, you get to pose -- Dick, you get
9 to pose hypotheticals, not the witness.

10 BY MR. GILL:

11 Q. Well, let's take the hypothetical then, Doctor,
12 as I'm trying to learn this concept, that I'm working
13 in research and my employer is paying my salary and
14 has also funded the research. All right?

15 A. Okay.

16 Q. Now, do we have a conflict of interest yet?

17 A. Less of one.

18 Q. Do we have any?

19 A. We have some conflicts of interest.

20 Q. Where is the conflict?

21 A. A -- one of the conflicts is a scientist becomes
22 a proponent of his own area of research. So he
23 might -- even though the employer is funding it, he
24 may come up with a result that fits his view of how
25 the research should be done.

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1 Q. Are you able to think of any situations where in
2 addition to the researchers' interests and the
3 employers' interests anyone else might have an
4 interest adverse to the employer?

5 A. The reason it's hard for me to come up with this
6 in a sense is because scientists are hired to come up
7 with the data irregardless of whether it's positive
8 or negative.

9 So an employer when he funds research is funding
10 that research because he wants the data positive or
11 negative. He doesn't care.

12 I think what you're thinking is, well, in a case
13 where the employee comes up with some data that
14 eliminates the employer, then that would be a
15 conflict of interest.

16 Q. Well, it would be bad for the employer, but who
17 would it be good for?

18 MR. ALLINDER: I object and I want to
19 continue my objection to this whole line of
20 questioning.

21 MR. GILL: Fine.

22 THE WITNESS: Good science properly
23 reported is to the benefit of everybody. The
24 employer is hiring the scientist to come up with data
25 irregardless of what that data will be or he's making

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1 a mistake doing the project in the first place.

2 BY MR. GILL:

3 Q. So if good science benefits everyone it benefits
4 the public at large, correct?

5 A. The public at large is included in everyone.

6 Q. And if the science we're talking about is
7 related to smoking, good science would benefit the
8 members of the public who are smokers?

9 A. It would benefit everyone.

10 Q. And in a situation where the good science
11 regarding smoking caused a decrease in the sales of
12 cigarettes that would be bad for the cigarette
13 company manufacturers, true?

14 MR. ALLINDER: Object to the form.

15 THE WITNESS: Any decrease in sales I
16 assume cuts profits.

17 BY MR. GILL:

18 Q. But if the good science told smokers that if you
19 continue to smoke you may well die as a result of
20 cancer or some other disease, that would be good
21 information for smokers to be aware of, correct?

22 MR. ALLINDER: Object to the form.

23 THE WITNESS: Good science properly
24 reported is good for everyone.

25 BY MR. GILL:

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1 Q. And that would allow smokers to have more
2 information, possibly complete information, that they
3 could rely upon in making decisions as to whether or
4 not they wish to continue to smoke.

5 MR. ALLINDER: Object to the form.

6 BY MR. GILL:

7 Q. True?

8 A. Good science properly reported is good for
9 everyone.

10 Q. Because it allows everyone to make decisions
11 based on good information?

12 MR. ALLINDER: Object to the form.

13 BY MR. GILL:

14 Q. And that's always good, correct?

15 MR. ALLINDER: Same objection.

16 THE WITNESS: I don't know. Good
17 science properly reported is always good for
18 everyone.

19 BY MR. GILL:

20 Q. And if the good science would tend to cause
21 smokers to stop smoking, if those smokers were
22 addicted to smoking, it would be even more important
23 that they get the benefit of that information,
24 correct, because they're going to need a lot of
25 motivation to quit.

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1 MR. ALLINDER: Object to the form.

2 THE WITNESS: My area of expertise is
3 not addiction and so I can't really comment on
4 whether someone's addicted or not.

5 BY MR. GILL:

6 Q. Well, I asked you to assume --

7 A. Since 1964 every cigarette pack has had a
8 statement on it that says smoking causes cancer. So
9 I think currently every smoker is already adequately
10 warned of this association.

11 Q. But certainly the cigarette companies that make
12 the cigarettes have never publicly stated that they
13 agree with the need for the warning, have they?

14 MR. ALLINDER: Object to the form.

15 THE WITNESS: It isn't my area of
16 expertise, nor have I looked into what they have or
17 haven't said.

18 I have looked at a great deal of research,
19 good quality research, published in research journals
20 that's been available to everyone, and a lot of that
21 was sponsored by these companies.

22 BY MR. GILL:

23 Q. But you haven't looked at the statements of the
24 cigarette companies with respect to whether or not
25 they agree there is a need for these warnings, have

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1 you?

2 MR. ALLINDER: Object to the form.

3 THE WITNESS: It's neither my area of
4 expertise, nor something I have specifically looked
5 at.

6 BY MR. GILL:

7 Q. Now, have we discussed enough --

8 A. Can I finish my answer?

9 Q. I think you've answered it.

10 A. No. It seems to me that the cigarette companies
11 are the ones putting this label on every pack of
12 cigarettes, so in a sense they're making a public
13 statement every time they sell a pack of cigarettes.

14 Q. So you've always assumed, Dr. Hamm, that when
15 the cigarette companies put the warning on the
16 packages the cigarette companies agreed with the
17 warnings; is that correct; is that what you've
18 assumed?

19 MR. ALLINDER: Objection.

20 THE WITNESS: That is not what I've
21 assumed, nor what I said.

22 BY MR. GILL:

23 Q. Well, if the warnings were on the packages the
24 cigarette companies would either agree with the
25 warnings or disagree; is that fair?

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1 MR. ALLINDER: Object to the form.

2 THE WITNESS: It's again not my area
3 of expertise. I haven't looked into the history of
4 what went on when the labels were put on the
5 packages.

6 BY MR. GILL:

7 Q. That's a simple question, Dr. Hamm.

8 MR. ALLINDER: Excuse me, that's
9 argumentative. He's answered the question.

10 MR. GILL: I don't think he has
11 answered the question.

12 BY MR. GILL:

13 Q. Dr. Hamm, are you able to appreciate that the
14 cigarette companies who put the warnings on the
15 packages either agree with the information contained
16 in the warnings or they disagree? It would be one or
17 the other, would it not?

18 MR. ALLINDER: Object to the form.
19 It's argumentative. He has answered the question.

20 THE WITNESS: It may be one or the
21 other, but it wouldn't surprise me if there is a
22 variety of opinions among this large group of people.

23 BY MR. GILL:

24 Q. But have you simply assumed up until now that
25 the cigarette companies are proponents of the warning

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1 information contained on their cigarette packages?

2 MR. ALLINDER: Object to the form.

3 THE WITNESS: I've never thought about
4 it and it doesn't matter to me whether they're
5 proponents or not.

6 The fact is there is a warning on every
7 package so I think the public is already adequately
8 warned.

9 BY MR. GILL:

10 Q. And the public doesn't need any further warning
11 as far as you're concerned?

12 MR. ALLINDER: Object to the form.

13 THE WITNESS: I think the warning
14 specifically says smoking causes lung cancer so I
15 don't know how else they could be more warned about
16 that particular input.

17 BY MR. GILL:

18 Q. Do the warnings indicate that cigarettes did --
19 cigarette smoke contains carbon monoxide?

20 MR. ALLINDER: Object to the form.

21 THE WITNESS: The warnings vary a
22 little bit and I think there is one that says that.

23 BY MR. GILL:

24 Q. And I take it as a scientist you understand that
25 cigarette smoke does contain carbon monoxide?

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1 A. Cigarette smoke contains thousands of compounds.

2 Q. Is carbon monoxide one of them?

3 A. I think so. I think whenever you burn anything
4 carbon monoxide is one of the things that comes off.

5 Q. And carbon monoxide is not good to ingest, is
6 it?

7 MR. ALLINDER: Object to the form.

8 THE WITNESS: You cannot talk about
9 any compound unless you talk about the dose. Many
10 compounds are toxic at high doses and not at low
11 doses.

12 BY MR. GILL:

13 Q. But if you get too much of a compound like
14 carbon monoxide you'll die, won't you?

15 A. If you get too much of anything. If you get too
16 much water you'll die.

17 Q. Carbon monoxide is going to cause death well
18 before drinking water, isn't it?

19 MR. ALLINDER: Object to the form.

20 THE WITNESS: The question is if you
21 get enough. So if you get enough of either of those
22 it will kill you.

23 BY MR. GILL:

24 Q. As between the two compounds do you have an
25 opinion as a scientist as to which might be

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1 considered more dangerous in terms of human
2 consumption?

3 MR. ALLINDER: Object to the form.

4 THE WITNESS: Are you talking about
5 pure water?

6 BY MR. GILL:

7 Q. Yes.

8 A. If you have absolutely pure water in carbon
9 monoxide, carbon monoxide is more toxic per unit than
10 water is.

11 Q. Now, do you think it's a good thing to let
12 smokers know that cigarette smoke contains carbon
13 monoxide?

14 MR. ALLINDER: Object to the form.

15 THE WITNESS: I don't know what help
16 it gives them unless you also discuss the dose
17 because there are a lot of things -- many things that
18 we contact and it's the dose that's very critical as
19 to whether it's important or not.

20 BY MR. GILL:

21 Q. So from your perspective would it be inadvisable
22 to tell smokers about the existence of carbon
23 monoxide in cigarette smoke?

24 MR. ALLINDER: Object to the form.

25 THE WITNESS: It's not my area of

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1 expertise and I don't really think about whether it's
2 advisable or not to provide certain things. But it's
3 difficult for the consumer to deal with incomplete
4 information.

5 BY MR. GILL:

6 Q. Carbon monoxide in the smoke of cigarettes will
7 kill mice if it isn't -- if the dose of smoke isn't
8 tightly controlled, correct?

9 MR. ALLINDER: Object to the form.

10 THE WITNESS: I have looked at a
11 little bit of that kind of information and that's one
12 of the things that people try to determine to make
13 sure that animals are getting an adequate dose of
14 that compound.

15 A high enough dose of carbon monoxide from
16 any source is toxic as we have already discussed.

17 BY MR. GILL:

18 Q. But in mice inhalation experiments frequently a
19 number of the mice have been killed off because they
20 were exposed to too much smoke initially.

21 MR. ALLINDER: Object to the form.

22 BY MR. GILL:

23 Q. True?

24 A. It's possible to kill a mouse with too much of
25 anything. So your too much is true of any compound.

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1 Q. Has CTR ever published any statements telling
2 the smokers in the country that in experiments with
3 inhalation of smoke by mice, mice were dying because
4 they were overcome by the carbon monoxide in the
5 smoke?

6 MR. ALLINDER: Object to the form.

7 THE WITNESS: CTR has sponsored a
8 large number of scientific publications that have
9 been published and are freely available to anyone who
10 wants to take them and interpret them any way they
11 want to interpret them.

12 BY MR. GILL:

13 Q. Do you know whether the management of CTR has
14 ever issued a public statement or press release
15 calling attention to the carbon monoxide caused
16 deaths in mice during inhalation studies?

17 MR. ALLINDER: Object to the form.

18 THE WITNESS: I can't remember a
19 specific paper, but I don't -- if you're talking
20 press releases only, I don't know why the National
21 Cancer Institute or anyone would issue such a
22 proclamation to the public. I think it would just
23 confuse the public.

24 BY MR. GILL:

25 Q. Well, the more information the public has the
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1 better off the public is if it's true information,
2 correct?

3 MR. ALLINDER: Object to the form.

4 THE WITNESS: All information has to
5 be put into context and good science has to be
6 reported adequately.

7 So the publication of inadequate or
8 misleading or press release type data can just
9 confuse the public.

10 BY MR. GILL:

11 Q. So good science even if it contains true
12 information is only good in your view if it is
13 interpreted in a certain way; is that correct?

14 MR. ALLINDER: Object to the form.

15 THE WITNESS: That's not what I said
16 at all. Scientific data does need interpretation.
17 Just raw data is very difficult for people to
18 comprehend, and there is always a possibility for
19 different interpretations, and that's why the
20 publication of that data is so important. So it
21 could be interpreted in a whole variety of ways.

22 BY MR. GILL:

23 Q. And the same would be true with respect to the
24 interpretations that the management of CTR placed on
25 smoke inhalation studies, correct?

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1 MR. ALLINDER: Object to the form.

2 THE WITNESS: Would you read that

3 question back?

4 (Record read.)

5 THE WITNESS: You're referring back to

6 the same as -- could you put that all into one

7 question for me?

8 BY MR. GILL:

9 Q. How data is interpreted would be a matter of

10 importance with respect to how CTR management

11 commented on smoke inhalation studies, correct?

12 MR. ALLINDER: Object to the form.

13 THE WITNESS: Everybody should

14 interpret their data to their best ability, but it's

15 not the final say because once that data is available

16 then anyone else can interpret in any other way they

17 wish and also issue something contrary.

18 That's the beauty of science. It's self

19 correcting. So each organization has to do it. It's

20 best to interpret the data as they see it and there

21 are obvious times when people can have disagreements.

22 But if the data is there then anyone else can

23 take that data and do just the opposite.

24 BY MR. GILL:

25 Q. But in your view, Dr. Hamm, the data from a

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1 scientific study almost always is subject to at least
2 many different interpretations, correct?

3 MR. ALLINDER: Object to the form.

4 THE WITNESS: By putting always in
5 your statement, I'm not --

6 BY MR. GILL:

7 Q. Say usually.

8 MR. ALLINDER: Same objection. The --

9 THE WITNESS: Even usually is
10 difficult.

11 MR. ALLINDER: Same objection.

12 A. Sometimes, sometimes.

13 Q. Is it ever?

14 A. I might even go frequently.

15 Q. So frequently data is subject to different
16 interpretations?

17 A. You would have to tell me which data and so
18 forth, but in very broad terms there frequently are
19 circumstances where scientists do disagree on the
20 interpretation of data.

21 Q. And in situations where some interpretation of
22 data is possible, potential conflicts of interest
23 could arise for the management of CTR, correct?

24 MR. ALLINDER: Object to the form.

25 THE WITNESS: Potential conflicts of

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1 interest can always arise, but that's the beauty of
2 data is it doesn't matter.

3 If you misinterpret, the data is there. It
4 speaks for itself. Someone else can interpret it
5 differently.

6 BY MR. GILL:

7 Q. But the way in which a given entity or
8 management of an organization like CTR interprets
9 data, that might provide some clues as to whether or
10 not the management resisting potential conflicts of
11 interest or surrendering to that, true?

12 MR. ALLINDER: Object to the form.

13 THE WITNESS: It may not because as I
14 said, there are frequent occurrences where data can
15 be interpreted very differently. So it would be very
16 difficult to tell whether the data was interpreted
17 one way or the other because of a conflict of
18 interest.

19 It could equally be interpreted because
20 that person believed it was the correct
21 interpretation.

22 BY MR. GILL:

23 Q. And in our case the jury will have to figure
24 that out based upon the evidence, correct?

25 MR. ALLINDER: Object to the form.

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1 THE WITNESS: What I hope would be
2 realized is the scientific advisory board who is an
3 outstanding group of scientists and would come with a
4 variety of different approaches to the data, but it
5 would very much surprise me that that group of people
6 couldn't interpret something that I would feel fairly
7 comfortable with their interpretation, and if
8 management was continuing to interpret data
9 otherwise, that board would have been unhappy with
10 that.

11 BY MR. GILL:

12 Q. Which publications have you read that were
13 authored by any of the scientific advisory boards of
14 CTR?

15 MR. ALLINDER: Object to the form.

16 THE WITNESS: Many of the -- I can't
17 give you the exact ones, but many of the scientific
18 advisory board have grants and contracts and
19 published papers.

20 BY MR. GILL:

21 Q. But you've read all of the annual reports of
22 CTR?

23 A. That's correct.

24 Q. Were any of those written by the scientific
25 advisory board as far as you know?

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1 MR. ALLINDER: Object to the form.

2 THE WITNESS: No. In fact -- well,
3 some were as I just stated because some of them had a
4 grant from --

5 Q. Dr. Hamm, you're misunderstanding me. I'm
6 talking about someone who sat down and put together
7 an annual report for CTR, that summarized the work of
8 the CTR. Is it your understanding that any of those
9 authors were SAB members?

10 A. I don't know what the mechanism was to prepare
11 those, but I would assume the SAB members read them
12 and if they were unhappy with them would have so
13 indicated.

14 BY MR. GILL:

15 Q. And with respect to any of the press releases
16 that you've seen, were any of those issued by the SAB
17 of the CTR?

18 MR. ALLINDER: Object to the form.

19 THE WITNESS: I don't know the
20 mechanism of how any of those press releases were
21 prepared, but I would assume the SAB read those
22 releases and if they had objected to them they would
23 have stated it.

24 BY MR. GILL:

25 Q. But as far as you can tell the annual report was
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1 actually written by the management of CTR, correct?

2 MR. ALLINDER: Object to the form.

3 THE WITNESS: I don't know what the
4 mechanism was to prepare the annual report. I don't
5 know who saw it, who reviewed it, who edited it.

6 BY MR. GILL:

7 Q. Well, is it reasonable to assume when CTR issued
8 an annual report it was issued over -- with the
9 authority of the chief executive officer of CTR?

10 MR. ALLINDER: Object to the form.
11 Asked and answered.

12 THE WITNESS: I don't know how the
13 format of how that report was generated, but I would
14 assume the SAB read those reports and if they had not
15 approved them or read them, would have said something
16 either before or after.

17 BY MR. GILL:

18 Q. If you're assuming that the SAB approved the
19 annual reports before they were issued, do you also
20 think it's reasonable that the chief executive
21 officer of CTR read and approved the annual report
22 before it was issued?

23 MR. ALLINDER: Object to the form.

24 THE WITNESS: I didn't say that I
25 thought the scientific advisory board approached the
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1 report prior to its issuance. I said I do not know
2 the mechanism of how this report was done.

3 I would assume all these people that we're
4 discussing at least read this thing at some point
5 even after it was done, and if they didn't agree we
6 would know about that.

7 BY MR. GILL:

8 Q. But Dr. Hamm, before anybody got to read it it
9 first had to be issued, correct?

10 MR. ALLINDER: Excuse me. Objection.
11 It's argumentative. He's answered your question. He
12 told you he doesn't know.

13 MR. GILL: He's told me about people
14 who have read it. I wanted --

15 MR. ALLINDER: He said he doesn't know.

16 BY MR. GILL:

17 Q. Dr. Hamm, I want you to focus on the issuance of
18 the annual report that bore CTR's name, all right?

19 A. I'm very focused on that.

20 Q. Do you believe that someone connected with the
21 organization had to authorize that document to be
22 issued and made available to the public?

23 MR. ALLINDER: Object to the form.

24 THE WITNESS: I do not have any idea
25 what the mechanism was to issue this annual report.

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1 Somebody wrote it, somebody looked at it, somebody
2 edited it. I don't know who that was.

3 But after it was issued then it was
4 available to everybody, and if the scientific
5 advisory board was unhappy with it they would have
6 said something.

7 BY MR. GILL:

8 Q. But Dr. Hamm, from your perspective as an
9 objective scientists who's trying to let the chips
10 fall where they may, with respect to your consulting
11 work on this case, is it reasonable to you that the
12 chief executive officer approved the issuance of that
13 CTR annual report and that it would not have been
14 issued without that person's approval?

15 MR. ALLINDER: Object to the form.
16 Calls for speculation.

17 THE WITNESS: I could make that
18 assumption, but I have no idea what the mechanism was
19 to generate that report. I don't know who approved
20 it, who wrote it as I've already mentioned.

21 I can make any kind of assumption, but I
22 don't know what value that has because I have no idea
23 how that was done.

24 BY MR. GILL:

25 Q. And in none of the annual reports that you have

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1 seen has there been any information that would have
2 adversely affected the sale of cigarettes, true?

3 MR. ALLINDER: Object to the form.

4 THE WITNESS: I really think good
5 science properly reported and interpreted is good for
6 everybody.

7 BY MR. GILL:

8 Q. And so whatever you saw in the CTR annual
9 reports in your view was good for everybody including
10 the tobacco companies?

11 MR. ALLINDER: Object to the form.

12 BY MR. GILL:

13 Q. Correct?

14 A. Good science properly reported is good for
15 everybody. And it appeared to me to be extremely
16 good science and it appeared to me to be properly
17 reported.

18 Q. And in the proper reporting of that good science
19 CTR never in any of its annual reports has stated
20 that the causal relationship between smoking and
21 disease has been established, true?

22 MR. ALLINDER: Object to the form.

23 THE WITNESS: I don't remember
24 specifically -- I don't know whether you're talking
25 about, is there a specific statement of that or the

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1 body of work there does not support that. I don't
2 quite understand your question.

3 BY MR. GILL:

4 Q. Is there any statement in any of those forty
5 some annual reports to the effect that from CTR's
6 perspective the causal link between smoking and
7 disease has now been established?

8 MR. ALLINDER: Object to the form.

9 THE WITNESS: I'm still asking the
10 question, do you mean is that said in so many words
11 or is it said in general or --

12 BY MR. GILL:

13 Q. Either.

14 A. There is a huge body, probably the biggest body
15 of research that's been done on this issue reported
16 in abstracted form, at least in this, and many of
17 those articles have so-called adverse results.

18 But the causal link to smoking is a much more
19 complex issue that probably will be a long time
20 before we have the whole mechanism of how this works.

21 Q. I realize that some of the articles actually
22 published through the research funded by CTR
23 contained findings that establish the causal link,
24 but what I want to know is whether you believe any of
25 the CTR annual reports ever called attention to any

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1 of those articles in that fashion.

2 MR. ALLINDER: Object to the form.

3 THE WITNESS: I don't think your first
4 statement is correct, that there are many articles in
5 there that establish the causal link. But your
6 question is do they highlight any of those?

7 They list every paper that was published
8 including an abstract of it. Plus whether they
9 highlight them or not, every one of these papers was
10 published in a reputable journal so was available to
11 everybody.

12 BY MR. GILL:

13 Q. And in the CTR annual reports does CTR summarize
14 the findings of those published reports?

15 MR. ALLINDER: Object to the form.

16 THE WITNESS: CTR gives you a complete
17 abstract of every one of those reports which is far
18 better than any summarization.

19 So anyone who wants to look at it can read
20 the entire abstract of every one of those reports.

21 BY MR. GILL:

22 Q. And does CTR in its annual reports attempt to
23 summarize the basic results or findings that occurred
24 that year based upon the research that it funded?

25 MR. ALLINDER: Object to the form.

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1 THE WITNESS: Through the years it
2 summarized various things that it did, so it
3 summarized some of the conferences that it had.

4 BY MR. GILL:

5 Q. And in any of summaries that CTR provided in its
6 annual reports, of the actual research papers that it
7 funded, do you recall any in which CTR summarized
8 those projects ascertaining findings that further had
9 the causal hypothesis that smoking caused disease?

10 MR. ALLINDER: Object to the form.

11 THE WITNESS: Every one of the reports
12 lists every paper that was published and a very good
13 abstract of every paper which is the appropriate form
14 to present that data. And anyone who wants to read
15 those abstracts is welcome to do so.

16 BY MR. GILL:

17 Q. And it's your understanding that who wrote the
18 abstracts? The researcher or someone in CTR?

19 MR. ALLINDER: Object to the form.

20 THE WITNESS: I don't know the -- I
21 don't know if those are the abstracts out of the
22 papers themselves. I haven't cross compared.

23 But every author who has an abstract in
24 there, if that abstract had not been representative
25 of their paper or a new interpretation of their

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1 paper, we would have heard about it.

2 BY MR. GILL:

3 Q. And in addition to these abstracts that you're
4 not sure who wrote, the annual reports also contain
5 some summaries of the research in a given year, do
6 they not?

7 MR. ALLINDER: Object to the form.

8 THE WITNESS: They all vary and some
9 have summaries of conferences and other things as
10 well.

11 BY MR. GILL:

12 Q. In any of the summaries whether of conferences
13 or of papers did you find any statements to the
14 effect that the research pointed toward the link
15 between smoking and disease?

16 MR. ALLINDER: Object to the form.

17 THE WITNESS: What I found was
18 summaries of findings of papers of things that had
19 happened, and they were accurately reported.

20 BY MR. GILL:

21 Q. You found a number of findings or a number of
22 summaries that suggested that research projects did
23 not establish a link between smoking and health or
24 disease, correct?

25 MR. ALLINDER: Object to the form.

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1 THE WITNESS: I'll have to go back and
2 look carefully. I wasn't looking at the summaries,
3 but I don't remember them being one sided or
4 misrepresenting any of the science.

5 I really remember the summaries I read as being
6 representative of what had occurred.

7 BY MR. GILL:

8 Q. Do you remember any summaries in those annual
9 reports to the effect that the research did not
10 demonstrate a causal link between smoking and
11 disease?

12 MR. ALLINDER: Object to the form.

13 THE WITNESS: As a scientist I pay
14 more attention to abstracts and papers and every
15 paper, every abstract, was there, and many of the
16 findings were not necessarily the type you're trying
17 to get me to say.

18 It seems to me that there were lots of
19 papers in there that established lots more
20 information to work on this hypothesis of the causal
21 link.

22 BY MR. GILL:

23 Q. Which papers were in there that as you read
24 about them pointed toward the establishment of the
25 causal link between smoking and disease?

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1 A. There were many. So there were papers on low
2 birth weight in children born to smokers. That was
3 reported. There were conferences where they tried to
4 establish better pathology around the country because
5 of the problem of different pathologists signing out
6 cases differently.

7 There were planning conferences to try to
8 improve inhalation work so that people could try to
9 develop a positive model so that model could be used
10 to further study this link, and on and on and on.

11 BY MR. GILL:

12 Q. Dr. Hamm, based on your extensive review of
13 these annual reports tell me the three most damaging
14 studies that you can recall being mentioned in these
15 reports that went toward the causal link between
16 smoking and disease.

17 MR. ALLINDER: Object to the form.

18 THE WITNESS: Good science properly
19 reported I don't view as damaging so I can't name
20 three damaging reports.

21 I've already named for you a few that link
22 to low birth rate and children born to smokers I
23 think is a very important finding. That was funded
24 by them and reported by them.

25 Q. Low birth weight in children born to smokers,

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1 that's one study, is it not, or one said set of
2 studies?

3 A. Mm-hmm.

4 Q. Give me the benefit of your thinking as to what
5 were the studies mentioned in CTR annual reports that
6 in your judgment were the strongest in making the
7 case that smoking causes disease.

8 MR. ALLINDER: Object to the form.

9 THE WITNESS: My area of expertise is
10 animal based research and most of the animal based
11 research has been negative. And -- but all of that
12 research has been adequately reported, and any
13 evidence that there might even be the slightest
14 chance that any of these studies would be positive
15 was reported including the Microbiological Associates
16 studies which were negative were reported as a
17 positive in the Journal of the National Cancer
18 Institute.

19 So there is an article that was published
20 as a positive when, in fact, I believe it's negative.

21 BY MR. GILL:

22 Q. Recognizing that you believe -- you believe all
23 the animal inhalation studies sponsored by CTR were
24 negative; is that correct?

25 MR. ALLINDER: Object to the form.

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1 THE WITNESS: Not only by CTR
2 sponsored, but any agency. So far we do not have a
3 good animal model of smoke inhalation.

4 BY MR. GILL:

5 Q. Setting those aside then, among all the other
6 studies that have been mentioned in the forty some
7 annual reports of CTR that have been reviewed, which
8 are the ones that come to your mind as most strongly
9 supporting the causal link between smoking and
10 disease?

11 MR. ALLINDER: Object to the form.

12 BY MR. GILL:

13 Q. If the low birth weight is one of them, that's
14 fine, but give me the three studies in your mind that
15 most strongly establish that link according to what
16 CTR said about them in these annual reports.

17 MR. ALLINDER: Objection.

18 THE WITNESS: We started off with
19 three and then you keep putting them aside.

20 My animal based experience is all animal
21 test so they're all negative. So it's difficult to
22 say, but there are thousands of them, and many of
23 them have some aspect of this causal link, and many
24 of these reports we will never get to what it is
25 without the body of research that's available now.

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- 1 BY MR. GILL:
2 Q. But the numbers, you can think of only numbers
3 two and three?
4 A. At the moment I can't, but I'm certain if I
5 thought about it some more I could.
6 Q. Would you look again at Exhibit 3337? Did you
7 review that document last night?
8 A. I did.
9 Q. As we discussed yesterday this is a report
10 written on the letterhead of CTR, correct?
11 A. As I said yesterday, I don't know what their
12 letterhead looks like. It says Council for Tobacco
13 Research at the left hand side, but it doesn't look
14 like letterhead to me.
15 Q. So you're not sure if that's letterhead, but
16 does that statement for Council Research in the
17 U.S.A. in the upper left-hand corner suggest to you
18 that it's that organization's stationary?
19 A. It appears to be.
20 Q. And the report is dated August 20, 1968?
21 A. That's correct.
22 Q. And the report is commenting on the progress
23 report submitted by Dr. Cecile Leuchtenberger dated
24 July of '68, correct?
25 A. That's what the title says.

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- 1 Q. And this is a report that deals with some mice
2 inhalation studies conducted by the Leuchtenbergers,
3 correct?
- 4 A. That's correct.
- 5 Q. There is a table shown in the CTR report dealing
6 with tumors that the mice contracted both in the
7 liver and in their lungs, correct?
- 8 A. Page 2 is such a chart.
- 9 Q. And with respect to lung tumors there were a
10 hundred and eighty-seven controlled mice, correct?
- 11 A. That's correct, in the -- yes. In both columns,
12 that is correct.
- 13 Q. The Leuchtenbergers reported one tumor in the
14 lung of the controlled mice, correct?
- 15 A. One male as I remember it.
- 16 Q. Well, I'm looking at the column all animals
17 under lung tumors and next to controls of which there
18 were a hundred and eighty-seven. Do they report one
19 lung tumor for the controls?
- 20 A. That's correct.
- 21 Q. And that's a percentage of about one half of one
22 percent of the controlled group contracted with
23 tumor?
- 24 A. That's correct.
- 25 Q. And with regard to the mice that were subjected

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- 1 to whole smoke there were two hundred and thirteen
2 mice in the study?
3 A. That's correct.
4 Q. And thirteen of them developed lung tumors?
5 A. That's what it says.
6 Q. And these tumors are adenoma carcinomas?
7 A. I don't think they were. There was a
8 combination of adenomas and adenoma carcinomas, but I
9 would have to read it again.
10 Q. Adenoma carcinomas are cancer?
11 A. They are.
12 Q. So with thirteen of the mice exposed to whole
13 smoke contracting lung tumors that was six point one
14 percent of the group?
15 A. That's what it says.
16 Q. And of the -- there was another group of mice, a
17 hundred and six of them, that were subjected to only
18 the gas phase of whole smoke, correct?
19 A. The purpose of the experiment was to expose them
20 only to gas phase, but they probably were exposed to
21 more than gas phase because of the technique used.
22 Q. And how did you arrive at that conclusion?
23 A. By looking at the Leuchtenbergers' paper and
24 information the type of machine that they had.
25 Q. So you think that even though they were trying

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1 to just expose the mice to the gas phase they
2 probably got exposed to the tars, the total matter of
3 the whole smoke; is that what you're saying?

4 A. They may have. That's one possibility.

5 Q. But the mice who were at least supposedly
6 exposed to only the gas phase three point eight
7 percent of them contracted lung tumors?

8 A. That's what it says.

9 Q. Now, if six point one percent of the mice
10 exposed to whole smoke got lung tumors and only a
11 half a percent of the controls got lung tumors would
12 that raise questions as to whether or not the whole
13 smoke was causing the lung tumors?

14 A. It would potentially raise questions, but the
15 problem -- the many problems with this study
16 including the historical controls get much higher of
17 incidence of cancer including the other
18 Leuchtenbergers' study.

19 So the data is marginal enough that you would
20 have to be very concerned that it's not positive --
21 this is not a positive study.

22 Q. Do you see this as another negative study?

23 A. It probably is a negative study.

24 Q. Because you think all animal inhalation studies
25 ever conducted are negative with respect to

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1 demonstrating that smoke causes disease?

2 MR. ALLINDER: Object to the form.

3 THE WITNESS: I'm speaking of all the
4 animal studies I can think of today that have been
5 looked at. There have been technical difficulties in
6 things like not paying attention to controls and so
7 forth that they all are negative.

8 BY MR. GILL:

9 Q. So even the ones that purported to be positive
10 you believe are negative?

11 A. Of all the ones I can think of right now, that's
12 correct.

13 Q. And I take it that all the ones that reported
14 negative results you agree with?

15 MR. ALLINDER: Object to the form.

16 THE WITNESS: Not simply because they
17 were reported that way, because that's what the data
18 show.

19 When you look at these -- at this point in
20 time particularly, people were not paying enough
21 attention to historical controls.

22 BY MR. GILL:

23 Q. So when the data showed negative results it was
24 reasonable to interpret the studies as being
25 negative?

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1 MR. ALLINDER: Object to the form.
2 Misstates his testimony.

3 BY MR. GILL:

4 Q. Is that correct?

5 A. If you're speaking about this particular study,
6 it was interesting to me that no one considered it
7 negative.

8 Q. I'm talking about your answer, Dr. Hamm, that in
9 your review of all the inhalation studies that you're
10 aware of, some have had -- have found negative data,
11 correct?

12 A. That's correct.

13 Q. And you believe that as to those that have found
14 negative data, the proper interpretation is that the
15 study was negative?

16 A. When I've looked into them they did make what I
17 think is a proper interpretation.

18 Q. And a number of other smoke inhalation studies
19 reported positive data?

20 A. Very few.

21 Q. And as to those, you believe that they
22 misinterpreted the data and that the proper
23 interpretations were that the tests were negative?

24 MR. ALLINDER: Object to the form.

25 THE WITNESS: I believe that when you

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1 look at all the data, that you can show that those
2 studies were negative.

3 BY MR. GILL:

4 Q. Now, if we simply look at the raw data here on
5 lung tumors with six point one percent of the study
6 group getting lung tumors, and only a half a percent
7 of the control group getting lung tumors does there
8 appear to be a statistically significant relationship
9 between the study group and the control group?

10 MR. ALLINDER: Object to the form.

11 THE WITNESS: I didn't run the
12 statistics on it. You would have to do that to be
13 certain.

14 It's marginal enough that you wouldn't be
15 real confident without running the numbers because
16 sometimes numbers that look fairly far apart are not
17 significantly different.

18 But control numbers of this group
19 frequently have a large number of tumors anyway so
20 you would have to take that into account.

21 This control group may not be
22 representative of the animals --

23 BY MR. GILL:

24 Q. Given all those concerns, if we simply look at
25 the numbers here it appears that the study group had

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1 about twelve times as much lung tumor activity as the
2 control group, true?

3 A. It appears that way.

4 Q. So that the study group that was exposed to
5 whole smoke would be at twelve times the risk of
6 contracting a lung tumor as the control group?

7 MR. ALLINDER: Object to the form.

8 THE WITNESS: I think that's a
9 misinterpretation of the data as I've just said. The
10 control group -- control groups frequently have
11 higher incidence of this so you can't say, well, in
12 this case we're going to set the control group at a
13 lower level based on this one hundred eighty-seven
14 animals.

15 BY MR. GILL:

16 Q. But simply based on this data, if this date
17 happened to be correct and accurate, this data would
18 indicate that the group exposed to whole smoke were
19 at twelve times the risk of lung cancer than the
20 control group, true?

21 MR. ALLINDER: Object to the form.

22 THE WITNESS: This data cannot be
23 correct and stand by itself in absence of the
24 knowledge that the control groups can have a higher
25 incidence of this normally.

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1 So this data does not stand alone. It
2 stands in with what we know about this mouse.

3 BY MR. GILL:

4 Q. And it's your understanding based upon all your
5 experience that this particular strain of mouse has a
6 normal lung tumor contraction rate of about six
7 percent?

8 MR. ALLINDER: Object to the form.

9 THE WITNESS: There is not enough data
10 to know precisely with this mouse. The data that's
11 available even in one of the Leuchtenbergers' papers
12 the control animals had over five percent as I
13 remember.

14 BY MR. GILL:

15 Q. Have you seen data indicating that typically
16 mice might get lung tumors at a two to three percent
17 rate?

18 MR. ALLINDER: Object to the form.

19 THE WITNESS: It varies with the
20 strain of the mouse. It varies with a lot of other
21 conditions.

22 BY MR. GILL:

23 Q. Which strain of mouse were the Leuchtenbergers
24 studying?

25 A. They were using the Snell mouse.

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1 Q. Now, if you would look at page 682011651, in the
2 last paragraph on that page about two thirds of the
3 way down the paragraph the author of this report
4 states, "It should be recognized that bronchial
5 lesions, including proliferative changes, (though not
6 cancer) have been seen by the Leuchtenbergers quite
7 consistently during their whole experience with smoke
8 inhalation beginning with their crudest equipment and
9 continuing with all the improved models since." Did
10 I read that correctly?

11 A. That's correct.

12 Q. So the author of this report who has the
13 initials RCH at CTR is indicating that over the
14 thirteen years that the Leuchtenbergers have been
15 conducting mice inhalation studies they've
16 consistently found bronchial lesions in the mice that
17 were exposed to whole smoke; is that your
18 understanding?

19 A. That's what it says.

20 Q. Now, do you know whether CTR in any of its
21 annual reports ever called attention to the fact that
22 over a number of experiments, over a span of thirteen
23 years, the Leuchtenbergers consistently found that
24 mice exposed to whole smoke developed lesions in
25 their lungs?

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1 MR. ALLINDER: Object to the form.

2 THE WITNESS: They published every one
3 of these papers, they had the abstract in there when
4 it came out in there, and all this information is
5 known.

6 They also published the fact that these
7 lesions go away when you quit giving them the smoke,
8 and that was well known.

9 BY MR. GILL:

10 Q. How was it in the annual reports that CTR
11 portrayed the results of the Leuchtenbergers' mice
12 inhalation research?

13 MR. PURDY: Object to the form. These
14 documents speak for themselves.

15 MR. ALLINDER: Form.

16 BY MR. GILL:

17 Q. In your understanding of the CTR reports how
18 were the Leuchtenbergers' studies portrayed?

19 MR. ALLINDER: Same objection.

20 THE WITNESS: Every paper was listed
21 with an abstract that correctly identified all of
22 these things, and it was freely available to anyone
23 reading the report.

24 BY MR. GILL:

25 Q. And did -- yesterday you didn't have any

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1 recollection of what the annual reports had to say
2 about the Leuchtenbergers' work. Do you --

3 MR. ALLINDER: Object to the form.

4 THE WITNESS: I don't remember saying
5 that and I'm giving you my recollection today.

6 BY MR. GILL:

7 Q. Did you look at any CTR annual reports over the
8 evening?

9 A. Unfortunately I'm a thousand miles away from
10 home.

11 Q. So the answer is no?

12 A. The answer no.

13 Q. But as you sit here today during the second day
14 of your deposition you now do recall some treatment
15 of the Leuchtenberger work in CTR annual reports; is
16 that what you're telling us?

17 MR. PURDY: Object to the form.

18 MR. ALLINDER: Object to the form.

19 THE WITNESS: I always recall and I
20 must not have thought of it yesterday. Every paper
21 is in every annual report with an abstract.

22 BY MR. GILL:

23 Q. Do you have in mind any of the language of any
24 of the abstracts that dealt with the Leuchtenbergers'
25 projects?

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1 A. They were the abstracts of their papers. I've
2 read several of their papers and it correctly reports
3 this information, and this is not a very significant
4 amount. So I can see why it was not given a high --
5 everybody knew this.

6 Q. Everybody knew this?

7 A. Well, anyone that's ever done any kind of
8 inhalation study or has read the Leuchtenberger
9 papers or read any other inhalation paper knows that
10 these lesions occur and go away when you stop the --

11 Q. The lesions go away if you stop exposing the
12 mice to the smoke?

13 A. That's correct. That's a common test that's
14 used to determine the importance of a lesion. If the
15 lesion doesn't go away, it's considered a more
16 important issue.

17 Q. And if the smoke doesn't go away the lesion may
18 eventually develop into a tumor?

19 MR. ALLINDER: Object to the form.

20 THE WITNESS: That's an area of
21 intense debate. It has been an area of intense
22 debate for many, many years and no one knows whether
23 these lesions eventually become cancer.

24 Actually these lesions are not known to not
25 have been confounded with other mouse disease and so

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1 forth. That's another problem with these studies at
2 this point in time.

3 BY MR. GILL:

4 Q. But since the Leuchtenbergers were finding a lot
5 of lesions in the lungs of mice exposed to smoke,
6 presumably the thirteen mice that develop lung tumors
7 in this particular study by the Leuchtenbergers
8 initially had lesions, true?

9 MR. ALLINDER: Object to the form.

10 THE WITNESS: As did the other two
11 hundred mice. They all had lesions.

12 BY MR. GILL:

13 Q. And in the case of the thirteen, the lesions
14 developed into tumors?

15 MR. ALLINDER: Object to the form.

16 THE WITNESS: No, that's not known.

17 No one knows. It's been an area of intense debate
18 and will be.

19 No one knows whether these lesions progress
20 to cancer or not, and the problem is exactly that, of
21 the two hundred thirteen, twelve hundred that didn't
22 progress and of those thirteen there are many areas
23 of the lung that have these lesions that also did not
24 progress. So only certain cells progress, and that's
25 an important area of research.

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1 BY MR. GILL:

2 Q. Did some of those cells that contain lesions
3 apparently progress into becoming lung tumors?

4 MR. ALLINDER: Object to the form.

5 THE WITNESS: We do not know. Cells
6 are continually being made in the lung. No one knows
7 for certain which cells become cancerous.

8 BY MR. GILL:

9 Q. So the tumor may have simply materialized
10 without ever having been a lesion?

11 A. That's a possibility. There are many theories
12 in cancer one being that irritation alone can cause
13 cancer by causing cells to make mistakes when they
14 divide, and that's -- even that theory is unproven
15 and people are working on that area as well.

16 So no one knows which cell becomes cancerous or
17 why.

18 Q. Now, in your recollection of how the
19 Leuchtenberger -- strike that. You said you've read
20 the actual abstracts of the Leuchtenbergers' papers
21 that they published?

22 A. I've read the papers as well.

23 Q. Do you know whether those abstracts as prepared
24 by the Leuchtenbergers are the abstracts that
25 appeared in the CTR annual reports in connection with

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1 their work?

2 A. I haven't made that comparison, but I would --
3 if the abstracts in the CTR misrepresent any of that
4 data, I'm certain scientists would have made that
5 correction.

6 Q. And based upon your recall today of the
7 treatment given by the CTR annual reports to the
8 Leuchtenbergers' abstracts did those abstracts report
9 positive or negative results with respect to whether
10 their work demonstrated a connection between smoking
11 and disease?

12 MR. ALLINDER: Object to the form.

13 THE WITNESS: I don't think -- to me
14 good research correctly reported. People decide for
15 themselves what the significance of it is.

16 But they reported these lesions. No one
17 knows what their significance are for cancer, for
18 example. We don't know if these lesions are, in
19 fact, significant.

20 BY MR. GILL:

21 Q. But when you read a scientific paper, Dr. Hamm,
22 with your training and your experience are you
23 usually able to fathom at least in your own mind
24 whether the results were positive or negative or are
25 you usually just completely at a loss to understand

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1 whether either of the two has occurred?

2 A. If you're going to say in the general sphere of
3 positive or negative, of course anyone can determine
4 that. So a lay person could determine that of a
5 scientific --

6 MR. PURDY: I want to object to the
7 form and I didn't want to interrupt him.

8 BY MR. GILL:

9 Q. As you read the abstracts in the CTR annual
10 reports about the Leuchtenbergers' work was it your
11 interpretation that you were reading about a negative
12 study or a positive study?

13 MR. ALLINDER: Object to the form.

14 THE WITNESS: Negative or positive
15 with regards to what?

16 BY MR. GILL:

17 Q. Establishing a connection between smoking and
18 disease.

19 MR. ALLINDER: Objection to form.

20 THE WITNESS: It was neither because
21 we do not know the significance of these lesions.

22 So it was reporting the fact that these
23 lesions occurred. It wasn't either positive or
24 negative towards lung cancer because we don't know --
25 nobody knows the significance of these lesions even

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1 in 1997.

2 BY MR. GILL:

3 Q. It reported then that regarding the
4 Leuchtenberger work there was a continuing
5 controversy as to whether the work demonstrated any
6 result of significance?

7 MR. ALLINDER: Object to the form.

8 THE WITNESS: It reported the findings
9 of that work and gave their significance in the words
10 of the author in the abstract.

11 BY MR. GILL:

12 Q. And basically the significance according to the
13 author in the abstracts that you read was that it was
14 unknown what the significance was?

15 MR. ALLINDER: Object to the form.

16 THE WITNESS: I would have to go back
17 and read them to be that specific, but I don't think
18 particularly at this time that no one took this as of
19 unknown significance, and people were actively trying
20 to determine what the significance was.

21 And that's why these studies led into
22 further studies to try to determine if there was some
23 significance to these findings.

24 But the findings were presented as they
25 occurred and their significance was obvious to

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1 anybody that had read the paper.

2 BY MR. GILL:

3 Q. But apparently your understanding was that their
4 significance was unknown and that further research
5 was required?

6 MR. ALLINDER: Object to the form.

7 THE WITNESS: Well, it's significant
8 that they occurred and they should be reported, but
9 anyone -- there are many compounds that when the lung
10 is exposed, these lesions occur.

11 And what's important is what do they
12 become, and no one knows what they become. So
13 this -- if it wasn't already established, this
14 established that cigarette smoke causes these lesions
15 in the lung of animals that are similar to lesions in
16 the lung of humans, but neither in animals nor humans
17 does anyone know whether these lesions progress to
18 cancer or not.

19 BY MR. GILL:

20 Q. So this research as reported by CTR established
21 that these lesions occurred, but whether there was
22 any significance to the lesions with respect to
23 contracting cancer was unknown?

24 MR. PURDY: Counsel, I made an
25 objection a long time ago, but can I just have a

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1 continuing objection that each of these abstracts and
2 reports and the papers speak for themselves and
3 objection to form to all of your questions?

4 MR. GILL: Yes, with regard to all
5 those questions.

6 MR. ALLINDER: Object to the form.

7 THE WITNESS: Could you repeat the
8 question.

9 MR. GILL: Would you read it back
10 please?
11 (Record read.)

12 THE WITNESS: I would have to read
13 those abstracts again. In general papers and
14 abstracts tend to report these much more positively
15 than they are because that's the nature of science.
16 Where it's easy to get something published that's
17 positive, it's difficult to get something published
18 that's negative.

19 But, in fact, since no one knows the
20 significance of these lesions, it would not be
21 appropriate to make such a statement because that is,
22 in fact, the case.

23 BY MR. GILL:

24 Q. But it's your recollection that if we reviewed
25 these abstracts from the CTR annual reports

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1 concerning the Leuchtenbergers with you at trial your
2 recollection is that they would tend to show positive
3 findings with respect to the link between smoking and
4 disease?

5 MR. ALLINDER: Objection.

6 BY MR. GILL:

7 Q. Is that what you are saying?

8 A. They gave evidence, in fact, that people thought
9 was positive and they were trying to do more
10 experiments to determine the significance of these
11 lesions.

12 So these papers, in fact, led into further
13 experiments to try to do them properly to determine
14 if these -- to fix all the problems with this, and
15 that's how science works.

16 Science is a step wide process. Each paper
17 people try to determine what are part fallacies of
18 arriving at this conclusion and do another study.

19 So these papers were taken seriously because
20 many other studies were done to try to determine the
21 significance of these.

22 Q. Many other studies were done with funding from
23 CTR, correct?

24 A. And I assume with other agencies as well.

25 Q. But according to these -- this particular --

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1 strike that. When CTR funded other work related to
2 the Leuchtenbergers' findings they funded other
3 researchers to do the work, correct?

4 MR. ALLINDER: Object to the form.

5 THE WITNESS: I believe the
6 Leuchtenbergers continued to do this work as well.
7 BY MR. GILL:

8 Q. You're not aware of any plans by CTR to shift
9 that work to Dr. Homburger into the Mason
10 laboratory?

11 MR. ALLINDER: Object to the form.

12 THE WITNESS: I don't view that you
13 can shift the Leuchtenbergers' work. You can shift
14 some funding, and there was a concerted industry
15 effort or CTR effort or both to try to develop proper
16 smoking searches and so forth to improve the quality
17 of research, and I found that information exemplary.
18 Here is an organization trying very hard to develop
19 an adequate model for this question.

20 BY MR. GILL:

21 Q. Of course the improved smoking machines could
22 have been made available to the Leuchtenbergers,
23 correct?

24 MR. ALLINDER: Object to the form.

25 THE WITNESS: As far as I know the

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1 smoking machines were made available to other people.
2 The Leuchtenbergers' machine had a lot of
3 deficiencies.

4 BY MR. GILL:

5 Q. Are you aware that CTR shifted the funding for
6 animal inhalation studies from the Leuchtenbergers to
7 Dr. Homburger and the Mason laboratory?

8 MR. ALLINDER: Object to form.
9 Assumes facts not in evidence.

10 THE WITNESS: One of the things I read
11 and the things you've just recently given me stated
12 that, in fact, the Leuchtenbergers preferred that
13 because the Leuchtenbergers wanted to keep a very
14 tight control on their laboratory and did not want to
15 do these large studies.

16 So it was with their -- it appeared to me
17 to be with their input they gave their machine to
18 one -- a Mason or one of the laboratories for further
19 testing.

20 So it appeared to me that the
21 Leuchtenbergers did their own -- they were involved
22 in it and it wasn't a CTR shift in the money, but it
23 was a group of people deciding these studies could be
24 done some place else which included the
25 Leuchtenbergers.

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1 BY MR.GILL:

2 Q. That's how it appeared to you?

3 MR. ALLINDER: Object to the form.

4 THE WITNESS: That's what I said and
5 it also gave me some confidence in the quality of the
6 Leuchtenbergers because a scientist who would turn
7 down a big project because they want to keep control
8 of their laboratory, that's the sign of an
9 outstanding scientist.

10 BY MR. GILL:

11 Q. If you would look at the Bate stamp page that
12 ends in 653 in Exhibit 3337, first full paragraph on
13 that page. The author points out that the lesions
14 observed by the Leuchtenbergers --

15 A. Excuse me. Where are you?

16 Q. First full paragraph on that page, first
17 sentence of that paragraph.

18 A. Okay.

19 Q. That sentence indicates that the lesion that the
20 Leuchtenbergers had observed was similar to those
21 that Dr. Auerbach had described in human lungs in
22 which Auerbach stated occurred frequently as a direct
23 result of cigarette smoking, correct?

24 MR. ALLINDER: Object to the form.

25 THE WITNESS: You're asking me is that

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1 what this says?

2 BY MR. GILL:

3 Q. Yes.

4 A. That's exactly what this says.

5 Q. Now, would you agree that if the lesions
6 observed by the Leuchtenbergers in the smoke exposed
7 animals was similar to those reported in the lungs of
8 human beings who were smokers that that would be
9 cause for concern with respect to the proposition
10 that the smoking was causing the development of those
11 lesions?

12 MR. ALLINDER: Excuse me. May I have
13 that read back please?
14 (Record read.)

15 MR. ALLINDER: Object to the form.

16 THE WITNESS: These lesions occurred
17 from smog. These lesions occurred from viruses.
18 So these lesions occur with a wide variety
19 of agents in humans and animals and one of the things
20 that causes them is smoke inhalation.

21 No one knows whether they're pre-cancerous
22 or not. That's an area of intense debate and study.

23 So, yes, you would say that -- I mean, you
24 would be shocked if these lesions didn't occur.

25 BY MR. GILL:

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1 Q. Because they do occur in smokers?

2 A. Because these lesions occur in all animals.

3 These lesions occur it if you breath smog. These are
4 common irritants to anything that irritates the lung.

5 BY MR. GILL:

6 Q. Including irritants that are toxic?

7 A. Including any irritant I assume. I don't know.

8 Maybe all irritants are considered toxic. I don't

9 know whether in the field of irritation where toxic

10 comes in, but probably all irritants are toxic.

11 Q. But it's not a good thing to develop lesions in
12 the lung, is it?

13 MR. ALLINDER: Object to form.

14 THE WITNESS: No. None -- I mean I

15 don't see any reason why you would want to develop

16 lesions in your lung.

17 BY MR. GILL:

18 Q. No one has ever claimed that those lesions are
19 beneficial in some way?

20 A. Not that I'm aware of.

21 Q. And there is serious concern that the lesions
22 may, in fact, be detrimental?

23 MR. ALLINDER: Object to the form.

24 THE WITNESS: It's an area of intense

25 debate and study. These lesions may be completely

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1 unrelated to cancer. So you may be able to have
2 these lesions and many people do have these lesions
3 their entire life and don't develop cancer, so they
4 may be unrelated. In that respect it's difficult to
5 say how related they are.

6 BY MR. GILL:

7 Q. But they may, in fact, be related to cancer?

8 A. That's a possibility.

9 Q. And if they are they are of serious concern?

10 A. That's a possibility.

11 Q. Now, do you know whether anybody at CTR ever
12 issued a public statement indicating that with
13 funding provided by CTR, CTR had discovered that mice
14 were developing the same types of lesions in their
15 lungs when exposed to smoke as had been reported in
16 the lungs of human smokers?

17 MR. ALLINDER: Object to the form.

18 THE WITNESS: All the -- the Cancer
19 Institute, everybody knew this and nobody in my mind
20 issued such a release nor do I think it would have
21 been helpful to the public, but the papers were
22 available, the abstracts were available.

23 Anyone who wanted to look at this
24 information, it was freely available in the public
25 domain.

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1 BY MR. GILL:

2 Q. But as far as you're concerned CTR never drew
3 attention to that type of information through any
4 type of press release, true?

5 MR. ALLINDER: Object to the form.

6 THE WITNESS: Neither did the Cancer
7 Institute, neither did the Heart-Lung Institute,
8 neither did anybody because it would probably be a
9 mistake to draw the attention to the public.

10 BY MR. GILL:

11 Q. You wouldn't want smokers to have this
12 information then?

13 MR. ALLINDER: Object to the form.

14 THE WITNESS: Any smoker who wants
15 this information is freely available. It's published
16 information.

17 BY MR. GILL:

18 Q. They might be able to dig it out if they went to
19 a library and to the science department of the
20 library is what you are saying?

21 MR. ALLINDER: Object to the form.

22 THE WITNESS: They could get it in
23 many other ways, but also if we issue such a release
24 we should tell them you have these when you have a
25 cold and when you breath smog, and until we know more

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1 about the significance of these lesions, you
2 should --

3 BY MR. GILL:

4 Q. So again, in order to protect smokers, it would
5 be better to withhold this information?

6 MR. PURDY: Object to the form.

7 MR. ALLINDER: Object to the form.

8 THE WITNESS: The information was
9 never withheld, it was published in their annual
10 reports. There were abstracts.

11 Anybody who wants to read this information
12 can. So the information was never withheld.

13 BY MR. GILL:

14 Q. But you do not believe it would have been a good
15 thing to draw attention to this information?

16 MR. ALLINDER: Object to the form.

17 THE WITNESS: That's my personal
18 opinion because we would have to draw their attention
19 to a million other things that are equally important.

20 BY MR. GILL:

21 Q. And if this information were drawn to the
22 attention of cigarette smokers through a research
23 project that was funded by an organization that was
24 owned by tobacco companies that certainly might cause
25 some smokers to stop smoking, true?

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1 MR. ALLINDER: Object to the form.

2 THE WITNESS: I've already told you
3 I'm not a smoker and I've only smoked a couple of
4 cigarettes so it's very hard for me to put myself in
5 the position of such a person, but every pack says
6 right on it it causes lung cancer.

7 So if they're willing to take that risk,
8 they would ignore this risk because this is a lesion
9 that is of much less significance.

10 BY MR. GILL:

11 Q. So you don't believe that drawing attention to
12 that information would likely have any impact on the
13 sale of cigarettes?

14 MR. ALLINDER: Object to the form.

15 THE WITNESS: Again, I don't know
16 anything about what impacts the sale of cigarettes.

17 BY MR. GILL:

18 Q. But you don't think it would?

19 MR. ALLINDER: Object to the form.

20 THE WITNESS: I honestly don't have
21 any way of knowing. I think, however, if this was
22 such an important thing, the Surgeon General could
23 have reported it, the Cancer Institute could have
24 reported it.

25 They all knew this information and no one

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1 chose to report it, and I also think this is correct
2 because it's not an important finding.

3 BY MR. GILL:

4 Q. But for smokers who might be addicted to
5 cigarettes, they might rely on far more information
6 on studies that were funded by cigarettes than by
7 governmental reports, true?

8 MR. ALLINDER: Object to the form.

9 THE WITNESS: I still don't know what
10 the definition of addicted is. That isn't my area of
11 expertise. I'm a non-smoker so it's hard for me to
12 put my position of such a position.

13 But it seems to me the public has much more
14 confidence in publications that come from the federal
15 government rather than from any company. People have
16 a cynical view that whatever they hear from a company
17 is probably incorrect.

18 BY MR. GILL:

19 Q. So in your view if cigarette smokers learn that
20 cigarette companies were issuing statements that drew
21 attention to the increased risk of disease through
22 smoking cigarettes they would tend to discount that
23 information as probably unreliable?

24 MR. ALLINDER: Object to the form.

25 THE WITNESS: That's not what I said.

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1 I think that as I said earlier, a smoker -- every
2 pack says this will cause cancer.

3 I think to try to tell him that this also
4 is going to cause some lesions in your lung, that we
5 don't know what they mean, is not providing him with
6 any more information that's going to help him make
7 any kind of decision.

8 Nevertheless, this information was put out
9 into the public domain for everybody to see, and no
10 other organization chose to warn anybody and I think
11 that's correct.

12 MR. GILL: Let's take a break here.
13 (Recess taken.)

14 BY MR. GILL:

15 Q. Would you look at the last page of Exhibit 3337,
16 Dr. Hamm?

17 A. Okay.

18 Q. Over the evening have you been able to figure
19 out whose initials RCH are?

20 A. I didn't work on it. I assumed as we discussed
21 yesterday it was Hockett.

22 Q. And he would have been a member of the
23 management of CTR in the capacity of associate
24 scientific director or something like that was his
25 title?

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1 A. I believe that's true.

2 Q. In the very last paragraph Dr. Hockett talks
3 about how the Leuchtenbergers' studies should be
4 properly interpreted, correct?

5 MR. ALLINDER: Object to the form.

6 THE WITNESS: The first two words are
7 properly interpreted.

8 BY MR. GILL:

9 Q. Then he goes on to state the results of the
10 study do not sustain the prevalent doctrines about
11 the nature of the dangers in cigarette smoking,
12 correct?

13 A. That's what it says.

14 Q. So if he says properly interpret this should be
15 a negative study?

16 MR. ALLINDER: Object to the form.

17 THE WITNESS: I have trouble with
18 negatives and positives because if you're referring
19 to it -- I mean this was -- it got published, it was
20 a positive study; positive in the sense of science,
21 but it didn't sustain. I agree with him, it didn't
22 sustain.

23 I would have to get into his head to know
24 what he's talking about the prevalent doctrines about
25 the nature of the dangers in cigarette smoking, but

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1 it didn't open our knowledge about any causal link to
2 lung cancer.

3 It did establish that the same lesions are
4 in the lungs of human beings when exposed to smoke.

5 BY MR. GILL:

6 Q. In connection with lung cancer caused by
7 smoking, this study demonstrated that possibly as
8 many as thirteen members of the study group
9 contracted lung tumors after being exposed to smoke,
10 correct?

11 MR. ALLINDER: Object to the form.

12 MR. PURDY: Object to the form.

13 THE WITNESS: We would have to go back
14 to all the problems with that interpretation. The
15 control animals were maybe not representative of the
16 control population, and that may not have been an
17 abnormal number of cancers if they had not been
18 exposed.

19 BY MR. GILL:

20 Q. Recognizing that every study may have its
21 problems in the way it was conducted, the actual data
22 that the Leuchtenbergers derived from the study
23 showed that the smoke exposed mice had approximately
24 twelve times the risk of a lung tumor as the control
25 group, correct?

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1 MR. ALLINDER: Object to the form.

2 THE WITNESS: You can't ignore the
3 other information, so when you're improperly
4 interpreting a study you can't deny the historical
5 control.

6 So it could have occurred irregardless of
7 whether they were exposed to smoke or not.

8 BY MR. GILL:

9 Q. But if the Leuchtenbergers' findings were, in
10 fact, reliable the study then would certainly be
11 positive with respect to demonstrating a link between
12 smoke and lung cancer, correct?

13 MR. ALLINDER: Object to the form.

14 THE WITNESS: I believe their findings
15 were reliable, but properly interpreted they show no
16 causal link.

17 BY MR. GILL:

18 Q. And how many lung tumors would you have to see
19 reported by the Leuchtenbergers among the study group
20 before you would interpret the results as positive in
21 establishing a link between smoke and lung cancer?

22 MR. ALLINDER: Object to the form.

23 THE WITNESS: Well, I haven't thought
24 of a specific number, but definitely it would have to
25 be statistically higher than the historical data base

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1 otherwise you're always running the risk of
2 misinterpreting this data. That's the importance of
3 a historical data base.

4 BY MR. GILL:

5 Q. So it would have to be well more than thirteen
6 mice of this study group for it to be interpreted as
7 positive as far as you're concerned?

8 MR. ALLINDER: Objection to the form.

9 THE WITNESS: I don't know the number
10 it would have to be, but it would have to be
11 statistically higher than the historical data base,
12 and the higher it was, the bigger that number and the
13 further away it was from that, the easier it would be
14 for me to determine.

15 Now, there is other problems with this
16 study, many other problems with this study. So even
17 if we had a much higher number, we would also have --
18 we're talking about one aspect of my objections.

19 This paper, in fact, did an outstanding job
20 of enumerateing all of those objections of the
21 problem with what were they exposed to, how much, did
22 the machine work, et cetera, et cetera.

23 BY MR. GILL:

24 Q. In other words, Hockett comments on the progress
25 report of Dr. Leuchtenberger did a fine job of

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1 setting forth all of the conceivable objections with
2 respect to the reliability of this study?

3 MR. ALLINDER: Object to the form.

4 THE WITNESS: It did a very good job
5 of setting forth many of them. It probably didn't
6 get all of them.

7 BY MR. GILL:

8 Q. In other words, Hockett made a very good effort
9 at trying to point out all of the conceivable
10 objections to the reliability of the Leuchtenbergers'
11 report?

12 MR. ALLINDER: Object to the form.

13 THE WITNESS: I think this is a very
14 good statement of the problems that Hockett thought
15 he found in this report.

16 BY MR. GILL:

17 Q. And apparently the proper interpretation of the
18 report, of the Leuchtenberger report, from Hockett
19 perspective, was that the study did not sustain the
20 prevalent doctrines about the nature of the dangers
21 in cigarette smoking?

22 MR. ALLINDER: Object to the form.

23 THE WITNESS: That's what Hockett says
24 in his last paragraph.

25 BY MR. GILL:

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1 Q. Then he goes on in the last paragraph to say
2 despite what the proper interpretation should be,
3 there is the usual danger - quote - that the results
4 will be misinterpreted and oversimplified by those
5 who are eager to find evidence that cigarette smoke
6 inhalation causes lung cancer - end of quote. Did I
7 read that properly?

8 A. I believe so.

9 Q. So Hockett feels that it would be a
10 misinterpretation of the Leuchtenbergers' data to
11 find evidence that cigarette smoke inhalation causes
12 lung cancer?

13 A. That's not what he says. He says that this
14 evidence misinterpreted -- your question sounded to
15 me like you generalized that Hockett thought that
16 about all evidence.

17 Q. Let me ask it again. Hockett is stating that he
18 believes it would be a misinterpretation of the
19 results of the Leuchtenberger study to find evidence
20 from that study that cigarette smoke inhalation
21 causes lung cancer, true?

22 MR. ALLINDER: Object to the form.

23 THE WITNESS: I believe that's what
24 Hockett has stated here in the sentence.

25 BY MR. GILL:

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1 Q. And Hockett in that sentence draws particular
2 attention to the danger that those who are -
3 quote - eager to find evidence that cigarette smoke
4 inhalation causes lung cancer - unquote - may
5 misinterpret the Leuchtenberger report, correct?

6 A. That's what he says.

7 Q. So by implication CTR is certainly not among the
8 group that is eager to find evidence that cigarette
9 smoke inhalation causes lung cancer, true?

10 MR. ALLINDER: Object to the form.

11 THE WITNESS: That's absolutely not
12 what it says. This represents Hockett at most and
13 he's saying that, I think quite collectively, it
14 would be wrong to misinterpret this data as being
15 evidence that cigarette smoke causes lung cancer.

16 But that is not saying that in any way if
17 the evidence did show that, Hockett wouldn't be the
18 first to say so.

19 BY MR. GILL:

20 Q. But Hockett certainly believes there is a group
21 that is eager to find that cigarette smoke causes
22 lung cancer, correct?

23 MR. ALLINDER: Object to the form.

24 THE WITNESS: A group?

25 BY MR. GILL:

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1 Q. More than one individual or entity in the
2 country?

3 A. Well, he says by those who are eager to find
4 evidence that cigarette smoke inhalation causes lung
5 cancer. That's in his words with quotes.

6 So I think I guess that's fair to say he said
7 that, however, I don't know if he wrote this; I don't
8 know if these are his words.

9 Q. Sure. The whole thing may be a forgery,
10 correct?

11 A. On the basis of what we have in front of us, I
12 think he thinks that there are groups that are eager,
13 and I wouldn't be surprised that he felt that --

14 MR. PURDY: Move to strike side bar
15 comments.

16 BY MR. GILL:

17 Q. Certainly Hockett doesn't place himself or CTR
18 as an organization among that group that is eager to
19 find evidence that smoking causes lung cancer, true?

20 MR. ALLINDER: Object to the form.

21 THE WITNESS: That isn't what it says.
22 I think they were eager to find the truth, and what
23 he's talking about is he's using it in a way that he
24 doesn't want people to misinterpret this simply
25 because they have that position.

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1 What CTR should be doing is trying to find
2 out the truth regardless of which position it
3 supports.

4 BY MR. GILL:

5 Q. That's what they should be doing?

6 A. That's what they were doing as far as I can
7 tell.

8 Q. And if Hockett is writing this report to
9 cigarette companies do you believe it's fair for the
10 individuals at the cigarette companies reading his
11 report to assume that Hockett does not place the CTR
12 among that group that is eager to find that cigarette
13 smoke causes lung cancer?

14 MR. ALLINDER: Object to the form.

15 THE WITNESS: I don't read that
16 sentence the way you do, so I don't see him putting
17 it in that category in any respect.

18 BY MR. GILL:

19 Q. He certainly isn't putting that to find
20 cigarettes --

21 A. I don't see that he puts anything in this
22 statement. He's simply saying he doesn't want this
23 study misinterpreted by someone that has a bias.

24 Q. And you don't see any suggestion here that he
25 has a bias in the opposite direction?

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1 MR. ALLINDER: Object to the form.

2 THE WITNESS: What I think CTR should
3 have is not have a bias. What they're trying to find
4 out is the truth; does cigarette smoking -- they
5 shouldn't be eager to find out either if it does or
6 doesn't cause, they should be trying to find out what
7 does it cause.

8 B MR. GILL:

9 Q. But as Hockett sets out that long list of
10 objections to the reliabilities of the
11 Leuchtenbergers' findings, you don't see in those any
12 bias against proving that cigarettes cause lung
13 cancer?

14 MR. ALLINDER: Object to the form.

15 BY MR. GILL:

16 Q. Is that what you're saying?

17 A. As I read it it appeared to me -- and I don't
18 know who came up with these objections, whether
19 they're his alone or other people, but it looked like
20 the things a scientist would find objecting to this
21 paper and they all seem to be legitimate.

22 I also found the paper to be very supportive of
23 that. This is an important finding that we need to
24 do more research on to try to determine the
25 significance of it, and I think, in fact, it led to

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1 more research of that type.

2 So I didn't see the paper at all in the way
3 you're characterizing it.

4 BY MR. GILL:

5 Q. More research conducted by different researchers?

6 MR. ALLINDER: Object to the form.

7 THE WITNESS: We already discussed

8 that it appeared to me the Leuchtenbergers were in
9 full cooperation and agreement that they can't do the
10 size of study that was needed to do this properly and
11 that they wanted to help and assist in that process,
12 and I saw evidence of that. They gave their Snell
13 mice to Microbiological Associates and so forth. So
14 it seems to me the Leuchtenbergers were part of that
15 process.

16 BY MR. GILL:

17 Q. That they were only too happy to pass the ball
18 to other researchers?

19 MR. ALLINDER: Object to the form.

20 THE WITNESS: Any researcher is always
21 happy when someone else wants to try to confirm or
22 extend their work and should work with them to do
23 that, so it's another example of the quality of the
24 Leuchtenbergers.

25 BY MR. GILL:

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1 Q. Now, looking again at that last paragraph on
2 Exhibit 3337, Dr. Hockett goes on to then state, "How
3 can the true implications of the study be brought out
4 and put in fair perspective at the time of
5 publication," and he asks that as a question,
6 correct?

7 A. Mm-hmm.

8 Q. Is that a yes?

9 A. That's exactly what it says in this document.

10 Q. And then he goes on to ask another question,
11 "Does The Council have an obligation to try to do
12 this," correct?

13 A. That's exactly what it says in this document.

14 Q. So he's asking the reader or the addressees of
15 this report whether they believe the Council for
16 Tobacco Research has an obligation to try to allow
17 the data the true implications of the Leuchtenberger
18 study and put it in a fair perspective at the time
19 that the Leuchtenbergers published the study,
20 correct?

21 MR. PURDY: Object to the form.

22 THE WITNESS: I don't know to whom
23 this was sent so I don't know, in fact, if he's just
24 asking himself these questions.

25 But if this were sent to me and he asked me

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1 these questions, I would say yes, they should do
2 something, that I think the sponsors's appropriate
3 role is -- if I were the Leuchtenbergers I would
4 loved to have them send this to me and I assume and
5 hope they did.

6 BY MR. GILL:

7 Q. Even though these were all grant research
8 projects that the Leuchtenbergers were involved in
9 where they were free to publish their results in any
10 manner, shape or form they wanted to?

11 MR. ALLINDER: Object to the form.

12 THE WITNESS: Irregardless of the
13 funding, if I were the Leuchtenbergers and someone
14 saw some flaw in my paper, I would love to have them
15 point that out to me.

16 BY MR. GILL:

17 Q. Now, in the Frank Statement the implication was
18 that the research results obtained through the
19 funding by the tobacco industry were going to be made
20 available for publication, be made available for the
21 public to aid in the search for the truth, correct?

22 MR. ALLINDER: Object to the form.

23 THE WITNESS: Do you mind if I look at
24 the Frank Statement?

25 BY MR. GILL:

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1 Q. Sure.

2 A. I don't remember it exactly saying that. I can
3 comment on it anyway in that I think all the
4 information was made available.

5 Q. But does the Frank Statement not contain a
6 pledge that they will continue to aid those whose job
7 it is to safeguard the public health?

8 MR. ALLINDER: Object to the form.

9 THE WITNESS: It says we are pledging
10 aid and assistance to the research effort into all
11 phases of tobacco use and health.

12 BY MR. GILL:

13 Q. Look at the bottom of the left-hand side column.
14 They're saying they always have and always will
15 assist those whose job it is to safeguard the public
16 interest, correct?

17 A. Yeah, and --

18 MR. ALLINDER: Excuse me. Object to
19 the form.

20 THE WITNESS: I don't see any conflict
21 there in that if I was the Leuchtenbergers I would
22 want them to send this to me because I would not want
23 to publish a paper that had these serious flaws
24 without addressing it.

25 BY MR. GILL:

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1 Q. In talking about the makeup of the TRIC with its
2 disinterested scientists and scientific director of
3 unimpeachable integrity, the clear indication is that
4 the result of this research would be made available
5 in the public interest, correct?

6 MR. ALLINDER: Object to the form.

7 THE WITNESS: The research was made
8 available. We just reviewed the Leuchtenberger paper
9 where all that data was presented and you went
10 through each tumor and told me in each group.

11 BY MR. GILL:

12 Q. If you can answer the question pending. The
13 question is that the Frank Statement implies that the
14 results will be made available in the public
15 interest, correct?

16 MR. ALLINDER: Object to the form.

17 BY MR. GILL:

18 Q. Does it or doesn't it?

19 A. I think I am answering your question. The
20 Leuchtenberger paper was published and the data was
21 made available, and I don't see where this has any
22 bearing on the fact that Hockett writes a memo with
23 one sentence on it that says do we have an obligation
24 to try to do this. The answer from everybody might
25 have been no.

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1 Q. But the Frank Statement is 1954 and the Hockett
2 memo is 1968, correct?

3 A. That's correct. Do you want to go back to '54
4 so we're not talking about this any more?

5 Q. The Frank Statement relates to certain things
6 that are going to happen in the future, correct?

7 A. That's correct.

8 Q. And when the Council is going to be formed, has
9 been formed, and it's going to do research work or
10 fund research work in the future?

11 A. That's correct.

12 Q. And the implication in the Frank Statement is
13 that as that research is conducted through the
14 funding of CTR, the results of the research will be
15 made available to the public in the public interest,
16 true?

17 MR. ALLINDER: Object to the form.

18 THE WITNESS: That's correct, but the
19 Frank Statement also doesn't say what that mechanism
20 will be, and it never says that a scientist who knows
21 a serious deficiency in a paper is not allowed to
22 tell anybody.

23 BY MR. GILL:

24 Q. But when Dr. Hockett, an employee of CTR,
25 attempts to get involved in putting into proper

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1 perspective the research result of Dr. Leuchtenberger
2 there is certainly a potential conflict of interest
3 for Dr. Hockett, isn't there?

4 MR. ALLINDER: Object.

5 THE WITNESS: None that I can see
6 because granting agencies should tell someone if they
7 think something in their paper is inappropriate, and
8 any granting agency would.

9 So as an employee of the National Cancer
10 Institute, if one of our contractors or grant people
11 had been publishing something that I knew was
12 incorrect, I would have informed them of that.

13 BY MR. GILL:

14 Q. Because what type of a conflict of interest
15 would you be facing in that situation if you did?

16 MR. ALLINDER: Object to the form.

17 THE WITNESS: I wouldn't be facing
18 any conflict of interest. The problem I would be
19 facing is if I let papers get published that have
20 incorrect information on it and I know better, I've
21 damaged science.

22 The Leuchtenbergers didn't have to take any
23 of this advice. They could go ahead and publish
24 their paper.

25 But if I were the Leuchtenbergers, I would

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1 have loved it if Hockett would have sent this to me
2 because when I wrote my paper I would want to be
3 aware of these deficiencies that other people
4 thought.

5 In fact, the Leuchtenbergers sent a whole
6 variety of people asking for that kind of input.

7 BY MR. GILL:

8 Q. And as it turned out in Exhibit 3336, the
9 Wakeham memorandum, it appeared that CTR did attempt
10 to persuade the Leuchtenbergers to withdraw a paper
11 that the Leuchtenbergers wished to publish with
12 respect to their mice inhalation studies, correct?

13 MR. ALLINDER: Object to the form.

14 BY MR. GILL:

15 Q. Do you remember that from yesterday?

16 A. I would like to look at that again.

17 Q. Help yourself.

18 MR. ALLINDER: Would you point it out
19 for him?

20 MR. GILL: The exhibit?

21 MR. ALLINDER: I'll point it out.

22 BY MR. GILL:

23 Q. Second page of Exhibit 3336, middle of the page.

24 A. Now, what's your question again?

25 MR. GILL: Would you read it back

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1 please?

2 (Record read.)

3 MR. ALLINDER: Object to the form.

4 THE WITNESS: I don't remember
5 specifically what I said when we went over this
6 yesterday, but I still don't have any problem with
7 any sponsor telling someone that there is something
8 in their paper that's inappropriate, and I would, in
9 fact, expect that's a responsibility of a sponsor.

10 BY MR. GILL:

11 Q. And one of the reasons that you don't see a
12 potential conflict of interest for Hockett and CTR in
13 trying to persuade the Leuchtenbergers to withdraw
14 the paper is that it's your view that if a paper
15 accurately reported a link between smoking and lung
16 cancer that information would be a benefit to the
17 cigarette industry that owned CTR, correct?

18 MR. ALLINDER: Object to the form.

19 THE WITNESS: That has nothing to do
20 with my opinion. My opinion is the fact that the
21 Hockett analysis of the paper, all of those issues
22 are exactly correct scientifically and that he should
23 be looking at the paper and seeing if the science is
24 correct. And whether he finds parts that are
25 incorrect, that should be communicated to the

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1 authors, and that has nothing to do with the rest of
2 your question.

3 BY MR. GILL:

4 Q. But from your perspective Hockett could analyze
5 the Leuchtenberger paper without having to worry
6 about the possibility that a determination by him
7 that the Leuchtenberger paper was reliable would
8 adversely affect the interests of tobacco companies
9 because if it did establish the link that would
10 benefit the interests of tobacco companies, true?

11 MR. ALLINDER: Object to the form.

12 THE WITNESS: I looked at the paper
13 not to determine Hockett's motives with regard to his
14 conflicts of interests so much as to look at were his
15 comments correct and scientifically accurate.

16 His comments were correct. They were
17 scientifically accurate and he, in my mind, should
18 communicate that to the author. That's how science
19 works and it's an appropriate mechanism.

20 BY MR. GILL:

21 Q. And if you recall, Dr. Hamm, from your
22 perspective, Dr. Hockett wasn't faced with any
23 potential conflict of interest when he reviewed the
24 Leuchtenberger paper and when he approached the
25 Leuchtenbergers, if it was him, about withdrawing

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1 their paper, true?

2 MR. ALLINDER: Object to the form.

3 THE WITNESS: He may have been faced
4 with conflicts of interest and the best I can do to
5 determine that would be to look at his comments to
6 see if they showed any sign of vague conflict of
7 interest.

8 His statements seem to me to be
9 scientifically accurate and the same objections that
10 many people would have had regardless of their place.

11 Someone from the Cancer Institute reading
12 this paper would have had many of the same objections
13 so I could not see -- determine on what is in here.

14 I can not see there is a conflict of
15 interest. He may have had those, but they're not
16 reflected I don't think in what he put into this
17 report.

18 BY MR. GILL:

19 Q. But it's your opinion that if the Leuchtenberger
20 report was absolutely reliable as establishing a
21 causal link between smoking and lung cancer, that
22 information would have been of benefit to tobacco
23 companies, correct?

24 MR. ALLINDER: Object to the form.

25 THE WITNESS: I do assume this paper

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1 was reliable. I don't however think the correct
2 interpretation is that it adds anything to the causal
3 link.

4 BY MR. GILL:

5 Q. I know that's your view, Dr. Hamm, but the
6 question is, if you had been of the view or were of
7 the view that the Leuchtenberger paper was not only
8 reliable, but that the proper interpretation of it
9 established a link between smoking and lung cancer
10 you would regard that as beneficial information for
11 cigarette companies, correct?

12 MR. ALLINDER: Object to the form.

13 THE WITNESS: I think good science
14 properly reported is good for everybody.

15 BY MR. GILL:

16 Q. So among whatever potential conflicts of
17 interests that could conceivably have affected the
18 conduct of Dr. Hockett, none of them would involve a
19 concern that a report establishing a causal link
20 between smoking and lung cancer would adversely
21 affect the interests of the tobacco companies that
22 were in effect paying his salary, true?

23 MR. ALLINDER: Object to the form.

24 THE WITNESS: I can't -- everybody is
25 subject to conflicts of interest. When I read what

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1 is written I have to read it in that light. However,
2 as I read what he wrote, he came up with the
3 scientific objections that anyone would have
4 regardless of their place of employment so I can't
5 see where he had any conflict of interest based on
6 what's in this document.

7 BY MR. GILL:

8 Q. Now, you're familiar with the work of Dr.
9 Auerbach with respect to smoke inhalation studies
10 involving dogs, Beagles?

11 A. I've reviewed that work.

12 Q. Who sponsored that work?

13 A. It wasn't CTR.

14 Q. Do you know who it was?

15 A. I don't. I should put on the record that
16 scientists don't usually look at who sponsors things
17 so we don't really pay a lot of attention to that.

18 Q. Are you speaking for the entire scientific
19 community in that statement?

20 A. No one can speak for any entire community as you
21 know, but I'm speaking for quite a few of us.

22 Q. Yourself and whomever you have spoken to on the
23 subject.

24 A. I haven't done a poll. I'm speaking from the
25 fact that we believe -- I believe that good science

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1 properly reported is in the best interests of
2 everybody, and it doesn't matter who funds it because
3 if you let funding affect your science then you've
4 got a problem.

5 Q. What did Auerbach find?

6 MR. ALLINDER: Object to the form.

7 THE WITNESS: That's a pretty broad
8 question.

9 BY MR. GILL:

10 Q. With his smoke inhalation study regarding in
11 Beagles.

12 A. He thought he had found tumors and reported
13 them.

14 Q. Was he wrong?

15 A. Apparently based on many people that have looked
16 at that data including the IARC materials they
17 question the histopathology.

18 Q. So you regard Auerbach's Beagle smoking studies
19 as negative?

20 MR. ALLINDER: Object to the form.

21 THE WITNESS: I do. Could I expand
22 that a little bit? To say --

23 BY MR. GILL:

24 Q. I think you've answered it.

25 MR. ALLINDER: Excuse me. Do you

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1 think you've answered it?

2 THE WITNESS: I would like to expand
3 a little bit because to say it's negative, there are
4 a lot of findings in his study, but I think it's
5 negative in regards to say that inhalation studies
6 showed tumors in those dogs.

7 BY MR. GILL:

8 Q. How about with regard to showing inhalation of
9 smoke caused adverse histopathologic changes in the
10 lung tissue of the dogs?

11 MR. ALLINDER: Object to the form.

12 THE WITNESS: The trouble with the
13 word adverse is troubling because he found
14 histopathological changes, but they were many of the
15 same changes that probably regress if you remove the
16 smoke.

17 BY MR. GILL:

18 Q. Well, aren't agent pathological changes adverse
19 changes?

20 MR. ALLINDER: Object to the form.

21 THE WITNESS: Not necessarily. You
22 have a number of pathological changes as you sit here
23 today and some of those may be of no significance to
24 your health.

25 You have atherosclerosis, for example, but

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1 it may not affect you adversely, but most of your
2 arteries have plaque in them.

3 BY MR. GILL:

4 Q. Do they help?

5 A. Probably not. They might in some circumstance.
6 In general they're not considered good for you
7 though.

8 Q. Do you know whether any scientists employed by
9 cigarette companies viewed Auerbach's findings in his
10 Beagle smoke studies as positive with regard to the
11 causation factor?

12 MR. ALLINDER: Object to the form.

13 THE WITNESS: I think some of them did
14 and they took this work very seriously at the time it
15 was reported as it did everybody.

16 BY MR. GILL:

17 Q. Do you know whether any of the cigarette
18 companies that employed the scientists ever publicly
19 acknowledged that some of their scientists regarded
20 Auerbach's study as positive with respect to
21 establishing the link between smoking and disease?

22 MR. ALLINDER: Object to the form.

23 THE WITNESS: I don't know that, but I
24 would find it kind of unusual because it's very rare
25 when any group of people have scientists comment in

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1 that fashion. So it would be a unusual circumstance
2 I believe.

3 BY MR. GILL:

4 Q. But you've seen some documents that indicated to
5 you that scientists employed by tobacco companies
6 regarded Auerbach's findings as positive with respect
7 to causation?

8 MR. ALLINDER: Object to the form.

9 BY MR. GILL:

10 Q. Isn't that correct?

11 A. I've seen evidence that they found it positive.
12 I don't think they thought the dogs had gotten lung
13 tumors. But I don't see where -- the link to
14 causation is still a very difficult one.

15 Q. And in finding these -- in finding Auerbach's
16 studies to have been positive were these documents
17 internal reports and memoranda that you were looking
18 at?

19 MR. ALLINDER: Object to the form.

20 THE WITNESS: I haven't seen anything
21 that isn't available to someone doing what I'm doing
22 and I haven't kept real track.

23 It seems to me that some of this -- you
24 gave us an Auerbach memorandum that's apparently --
25 apparently an internal document, and the information

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1 you gave us just a few days ago.

2 BY MR. GILL:

3 Q. Someone who's doing what you're doing would be
4 consulting for Shook, Hardy & Bacon, are you saying
5 the document is available for anybody who is
6 consulting Shook, Hardy & Bacon?

7 MR. ALLINDER: Object to the form.

8 THE WITNESS: That document I believe
9 is freely available, but I view all the documents I
10 have as being confidential, and I look to Shook
11 Hardy & Bacon to determine which of those are covered
12 by some kind of order or not and they do a very good
13 job of that.

14 And I think I've seen very few documents
15 that aren't available to at least anyone who's an
16 expert witness in these cases.

17 BY MR. GILL:

18 Q. When was the last time you saw an internal
19 tobacco company document that acknowledged Auerbach's
20 finding as positive?

21 MR. ALLINDER: Object to the form.

22 THE WITNESS: Regarding Auerbach,
23 I've seen the public information and I don't know
24 what date it was that I've seen the memos and I don't
25 keep track of which day which documents arrives at my

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1 door.

2 BY MR. GILL:

3 Q. Well, you saw such an internal memo among the
4 documents that the State of Minnesota and Blue Cross
5 Blue Shield predesignate for your deposition, did you
6 not?

7 A. I did.

8 Q. That's within the last few days that you saw
9 that document?

10 A. That's correct.

11 Q. Now, you had never seen that document before
12 then, had you?

13 MR. ALLINDER: Object to the form.

14 THE WITNESS: I think I have seen that
15 document and I think I saw it in conjunction with
16 another one of the trials, but I don't know that.

17 BY MR. GILL:

18 Q. Was it shown to you through the efforts of one
19 of the plaintiffs in these other trials or was it
20 shown to you as part of the documents that you
21 reviewed in preparing your written reports in the
22 Minnesota case?

23 MR. ALLINDER: Object to the form.

24 THE WITNESS: I don't know when I've
25 seen this document, and I don't know -- I've probably

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1 seen it as part of an exhibit and in someone else's
2 deposition, but I don't honestly know where I've seen
3 it.

4 BY MR. GILL:

5 Q. Who was the tobacco company scientist who felt
6 that Auerbach's study showed positive findings
7 regarding causation?

8 MR. ALLINDER: Object to the form.
9 Misstates his testimony.

10 THE WITNESS: I again view there were
11 scientists who saw they thought this was a positive
12 study with regard to cigarette smoke causing lung
13 cancer in dogs, but I don't think they took it any
14 further to proving causation, and I think the
15 gentleman's name was Hughes, but I would have to look
16 at the document to be certain.

17 BY MR. GILL:

18 Q. Have you attempted to find out any more
19 information about the background of Dr. Hughes, what
20 his qualifications might have been?

21 A. No, I haven't. Since I know that the Auerbach
22 study is negative, I was quite impressed that people
23 took it as a positive and intended to do things to
24 try to prove it some way or another or to try to
25 extend that work.

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1 Q. Who did Dr. Hughes work for?

2 MR. ALLINDER: Object to the form.

3 THE WITNESS: I don't remember.

4 BY MR. GILL:

5 Q. Now, who did -- strike that. How did the
6 interpretation that CTR placed on Auerbach's Beagle
7 studies differ from the interpretation that Dr.
8 Hughes placed on those studies in Dr. Hughes'
9 internal memo?

10 MR. ALLINDER: Object to the form.

11 THE WITNESS: I don't know enough
12 about what CTR -- I only know a minimum amount and
13 again included in things that you presented to me,
14 but it appeared to me that CTR had more information
15 about the nature of the lesions, and the information
16 they had has proven to be correct as far as other
17 people that have looked at that work.

18 BY MR. GILL:

19 Q. So are you saying that it's your understanding
20 that CTR management didn't agree with Dr. Hughes'
21 assessment of the significance of the Auerbach Beagle
22 study?

23 MR. ALLINDER: Object to the form.

24 THE WITNESS: I didn't say that. I
25 don't know that CTR ever saw -- I never saw anything

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1 that they responded to Hughes or knew what Hughes
2 said.

3 I don't know if the Hughes' memo was spent.
4 I don't know who read it and I've seen nothing that
5 shows me that CTR knew about it or read it or
6 anything.

7 BY MR. GILL:

8 Q. The Hughes' memo appears to be an internal memo
9 not intended for public distribution, true?

10 MR. ALLINDER: Objection. Form.

11 THE WITNESS: I have no idea. All of
12 these are very difficult for me to determine what
13 they are. There is no date stamp, company names.
14 It's difficult for me to know what it is.

15 Now, a particular one might be different in
16 that respect. I don't know specifically. It may
17 have more information on it than I just stated.

18 BY MR. GILL:

19 Q. Since CTR had nothing to do with the funding of
20 Auerbach, how would CTR become involved at all in
21 attempting to interpret his study?

22 MR. ALLINDER: Object to the form.

23 THE WITNESS: That's the way science
24 works. It would amaze me if CTR didn't try to
25 interpret every paper that related to smoking and

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1 health because CTR was in the business of doing that
2 kind of research.

3 BY MR. GILL:

4 Q. CTR's management must have reviewed everything
5 they could get their hands on in regards to smoking
6 and health and attempted to interpret those works;
7 that's what you expect?

8 MR. ALLINDER: Object to the form.

9 THE WITNESS: Well, I would hope so.

10 I hope the Cancer Institute isn't just reading the
11 papers by Cancer Institute representatives.

12 BY MR. GILL:

13 Q. And in terms of the CTR doing exactly as you
14 suggested, we would have a situation where people who
15 are being paid by the cigarette industry who are
16 going to be in a position of interpreting the
17 reliability of scientific research studies conducted
18 outside their organization?

19 MR. ALLINDER: Object to the form.

20 BY MR. GILL:

21 Q. Correct?

22 A. I think that anybody who works in the area of
23 research on smoking and health should be reading
24 every paper that's published and attempting to
25 interpret it and share that interpretation with as

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1 many people as they can.

2 So I see no problem at all with anybody
3 regardless of where they work taking a paper in the
4 open literature and interpreting it.

5 Q. And as far as you know certainly CTR management
6 attempted to share with as many people as they could
7 their interpretation of this other scientific
8 literature, correct?

9 MR. ALLINDER: Object to the form.

10 THE WITNESS: I don't know who they
11 tried to share it with. I don't know how to answer
12 your question.

13 I would think that they would share it with
14 anybody that's in the field of the science.

15 BY MR. GILL:

16 Q. And should the work of CTR and commenting upon
17 its interpretation of other scientific research have
18 gone so far as to attempt to influence other funding
19 organizations in their funding decisions?

20 MR. ALLINDER: Object to the form.

21 THE WITNESS: I think any scientist
22 who knows of a problem -- a significant problem in a
23 paper should communicate that to whomever he thinks
24 needs to know that information to make whatever
25 decision they're going to make. That's how science

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1 works.

2 BY MR. GILL:

3 Q. So as far as you're concerned, Dr. Hamm, science
4 would be appropriately working if representatives of
5 CTR were approaching those at NCI who were making
6 funding decisions and talking to them on the subject
7 of whether they should or should not fund a given
8 scientist?

9 A. I don't think they should be talking to anybody
10 about funding or not, but I think they should be
11 providing any information they have that might affect
12 it.

13 If I were an NCI employee making a funding
14 decision, I would love to have any information I
15 could on the science of a particular line of
16 research.

17 BY MR. GILL:

18 Q. Well, CTR appeared to be plenty busy with
19 funding their own projects, didn't they, as far as
20 you could tell?

21 MR. ALLINDER: Object to the form.

22 THE WITNESS: I don't know how busy
23 they were at all. I've never been a member of the
24 organization, I've never been to one of their
25 meetings. I don't know how busy they are.

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1 But regardless of how busy they are, they
2 should be busy reading every paper because it should
3 be influencing their funding decisions as well.

4 BY MR. GILL:

5 Q. And then when they interpret all the papers they
6 read, it's appropriate for CTR representatives to run
7 over to other funding agencies and address issues
8 about whether those funding agencies should continue
9 the funding for given scientists in a certain field?

10 MR. ALLINDER: Object to the form.

11 THE WITNESS: I don't -- as I said
12 earlier, I don't think they should be trying to
13 affect anybody's funding, but all scientists
14 should -- if they have information should communicate
15 it to whomever is making decisions.

16 BY MR. GILL:

17 Q. It shouldn't make any difference to CTR how NCI
18 makes its funding decisions, should it?

19 MR. ALLINDER: Object.

20 THE WITNESS: I don't know that it
21 does.

22 BY MR. GILL:

23 Q. It shouldn't, should it?

24 MR. ALLINDER: Object to the form.

25 THE WITNESS: I guess I need a more

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1 specific question.

2 BY MR. GILL:

3 Q. NCI ought to make its own funding decisions,
4 shouldn't it?

5 A. As far as I know they do.

6 MR. ALLINDER: Object to the form.

7 BY MR. GILL:

8 Q. And as an organization supported by public tax
9 dollars you wouldn't want to have NCI's funding
10 personnel lobbied by representatives of private
11 interests with respect to funding decisions, would
12 you?

13 MR. ALLINDER: Object to the form.

14 THE WITNESS: As a taxpayer I would
15 want the NCI people to be funding papers based on
16 their complete knowledge of the science. So any
17 information about the science should be communicated.

18 BY MR. GILL:

19 Q. Even if it comes from lobbyists?

20 A. I don't care who it comes from.

21 MR. ALLINDER: Object to the form.

22 THE WITNESS: Proper science properly
23 interpreted should be handed to anybody.

24 MR. GILL: Would you mark this? We
25 don't need this marked. Off the record.

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1 (Discussion held off the record.)

2 MR. GILL: We just realized -- Mr.
3 Allinder called to my attention that what we marked
4 as 3338 has been previously marked as Exhibit 428 so
5 we will use that number and we will strike the
6 designation of 3338 for this document.

7 BY MR. GILL:

8 Q. You reviewed Exhibit 428 in preparation for your
9 deposition, did you not, Dr. Hamm?

10 A. I did.

11 Q. This is the internal memo authored by I.W.
12 Hughes at Brown & Williamson Tobacco Company, correct?

13 MR. ALLINDER: Object to the form.

14 THE WITNESS: I know it's Hughes
15 because his signature is on the end. I have no idea
16 where it came from. It says B&W at the top, but
17 there is nothing on it to indicate to me that it's
18 any kind of a document other than Hughes.

19 BY MR. GILL:

20 Q. But if the evidence in this case shows that Dr.
21 I.W. Hughes was employed as a scientist at Brown &
22 Williamson in February of 1970 which is the date of
23 this document you wouldn't have any problem then
24 accepting the fact that this would be a Brown &
25 Williamson internal memo, true?

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1 MR. ALLINDER: Object to the form.

2 THE WITNESS: I don't have any problem
3 with anything that's proven.

4 MR. ALLINDER: I would like to state
5 for the record that it is not clear that the first
6 page of this document, this exhibit, is included with
7 the next two pages, but they're certainly in
8 sequence, Bates number sequence, but it is not clear
9 that this is a single document as opposed to --

10 MR. GILL: My questions will be pages
11 two and three so we don't have to deal with that
12 problem.

13 BY MR. GILL:

14 Q. If you look at page 2, Dr. Hamm, these are
15 comments by Dr. Hughes with regard to the
16 Auerbach/Hammond paper, correct?

17 A. That's what it appears.

18 Q. And Hammond was a co-author of the paper by Dr.
19 Auerbach with respect to the smoke inhalation studies
20 involving Beagles, correct?

21 A. I think that's correct.

22 Q. Dr. Hughes states in the very first paragraph
23 that although the Auerbach paper is open to criticism
24 on several counts, the general standard of the paper
25 is good, correct?

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- 1 A. That's what it says on the first page.
2 Q. And then Hughes goes on to state that, "I am of
3 the view that this shows it is now possible to
4 produce tumors in the respiratory system of an animal
5 by direct inhalation," correct?
6 A. That's what he states, but the information is
7 incorrect.
8 Q. Obviously the lung is part of the respiratory
9 system of the Beagle?
10 A. That's correct.
11 Q. And the Auerbach paper specifically focused on
12 tumors in the lungs?
13 A. That's correct.
14 Q. Now, going then to page 3 of the Hughes'
15 internal memo, the very last point that he makes is
16 that his comments lead him to the view that although
17 correlation with the human is still way off, he
18 accepts that significant tumorogenic conditions
19 following inhalation has been achieved. That's what
20 he says, correct?
21 A. That's what he states.
22 Q. That would be a significant finding with respect
23 to the causal link between smoking and disease, would
24 it not?

25 MR. ALLINDER: Object to the form.
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1 THE WITNESS: It would be an important
2 piece of information were it correct. The causal
3 link is still a very difficult process.

4 BY MR. GILL:

5 Q. You simply believe that Hughes' interpretation
6 of Auerbach is wrong?

7 MR. ALLINDER: Object to the form.

8 THE WITNESS: Based on the information
9 that I've been able to find on this particular
10 project, not only I, but almost everybody, believes
11 now that it was wrong and other studies of this were
12 never published because they never found anything.
13 There are some real flaws in this paper.

14 BY MR. GILL:

15 Q. And apparently Hughes recognized that there were
16 some flaws in the Auerbach paper?

17 A. I'm talking about ones that are more significant
18 than Hughes recognized. I'm impressed that Hughes
19 took this so seriously and it shows to me that they
20 were taking all this information seriously.

21 Q. Well, Hughes certainly appears to be candid in
22 expressing his views, does he not, in this memo?

23 MR. PURDY: Object to the form.

24 THE WITNESS: Hughes may speak like
25 this, but I don't know how candid or uncandid he can,

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1 be so it's a difficult word for me to say, but Hughes
2 has stated what he thinks about this project.

3 BY MR. GILL:

4 Q. Certainly as an employee of a tobacco company,
5 Hughes wouldn't have any particular reason to distort
6 an interpretation of a scientific paper that
7 suggested a link between smoking and disease, would
8 he?

9 MR. ALLINDER: Object to the form.
10 Calls for speculation.

11 THE WITNESS: People always have these
12 conflicts of interest we have been talking about and
13 different people have different conflicts of
14 interest, but it's impressive to me that Hughes --
15 and I would hope in any kind of memorandum you would
16 state what you think.

17 So Hughes it appears to me stated what he
18 thought about this project.

19 BY MR. GILL:

20 Q. If you would look at paragraph 3 on the second
21 page of the exhibit, this in the paragraph where
22 Hughes very candidly states that two areas of
23 Auerbach's tabulated results are dangerous. Do you
24 see that use?

25 MR. ALLINDER: Object to the form.

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1 THE WITNESS: I see that.

2 BY MR. GILL:

3 Q. And dangerous to the interests of tobacco
4 companies?

5 MR. ALLINDER: Object to the form.

6 BY MR. GILL:

7 Q. Is that the appropriate interpretation?

8 A. I don't know how to interpret what he meant by
9 that.

10 Q. When Hughes says looking at the tabulated
11 results two areas which are dangerous are and then he
12 sets them forth, you're not sure to whom they might
13 be dangerous?

14 MR. ALLINDER: Object to the form.

15 THE WITNESS: Well, there is several
16 possible interpretations. It's not very specifically
17 written. I suppose he could be saying that it's
18 dangerous to try to make a leap from dog results to
19 incidence in humans because that's in his first
20 sentence.

21 But it's not written in a way that I can --
22 I don't think I can determine what he meant. I think
23 Hughes would have to tell you what he meant by that.

24 BY MR. GILL:

25 Q. Let's look at the two areas he considered to be

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1 dangerous. One is the incidence of emphysema after
2 smoking, correct?

3 A. Well, I have to go back to the start of the
4 sentence where it says I do quarrel with the section
5 starting with page 8 in which Hammond draws relation
6 between the dog result incidence in human beings.

7 So it seems to me like it may be dangerous to
8 start taking dog results and extrapolating them to
9 humans.

10 Q. But then he goes on and talks about two areas
11 that are dangerous and then he sets out the dangerous
12 areas through an intention, does he not?

13 MR. ALLINDER: Object to the form.

14 THE WITNESS: Well, he did, but it
15 still appears to me that he's saying these are areas
16 that it's dangerous to jump dog results and the
17 incidence in humans.

18 BY MR. GILL:

19 Q. Well, he talks about there being danger
20 regarding the incidence of emphysema in smoking, does
21 he not?

22 A. I have to read the whole wording here, but it
23 seems to me he's quarreling with the section starting
24 on page 8 where Hammond draws a relation between the
25 dog results and incidence in humans, and he's saying

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1 I think it's dangerous to jump from the dog results
2 on the incidence of emphysema in smoking to the
3 incidence in humans.

4 Q. Let's assume the jury is looking at a big blowup
5 of this particular section of the Hughes' memo as
6 we're speaking now, and I think the jury would be
7 able to see some reference to language about
8 incidence of emphysema after smoking. Do you see
9 that reference, Dr. Hamm?

10 MR. ALLINDER: Move to strike
11 everything in the question and object to the form.

12 MR. PURDY: Let me add a further
13 objection as I have in the past that the document
14 speaks for itself.

15 BY MR. GILL:

16 Q. Do you see the reference to incidence of
17 emphysema after smoking?

18 A. It was in my last answer.

19 Q. And that is referenced as one of the two
20 dangers, correct?

21 MR. ALLINDER: Object to the form.

22 THE WITNESS: As part of the overall
23 sentence that says he quarrels with the relation
24 between the dog results and incidence in humans.

25 So it appears to me he's quarreling with

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1 the way Hammond took the incidence of emphysema in
2 dogs and then related it to the incidence in humans.
3 That appears to me what he's quarreling with.

4 BY MR. GILL:

5 Q. Dr. Hamm, we're dealing with two completely
6 different sentences or at least you are, correct?

7 MR. ALLINDER: Excuse me.

8 BY MR. GILL:

9 Q. There is a sentence that begins looking at. Do
10 you see that?

11 A. I do, and it's part of the section starting page
12 8 in which -- the part he's quarreling with is the
13 dog results in incidence in humans.

14 So the tabulated results, even though they
15 happen to be one sentence down, directly refer to
16 that and he says in those tabulated results two areas
17 which are dangerous is Hammond taking the dog results
18 and comparing them to the human results, and these
19 are the two areas where he thinks it's dangerous to
20 do that.

21 Q. I want -- paragraph 3 has two sentences, does it
22 not, Dr. Hamm?

23 A. It actually has at least three -- it has four
24 sentences actually.

25 Q. All right. There are two sentences in the first

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1 paragraph, correct?

2 A. That's correct.

3 Q. Then there is a second paragraph is there not?

4 A. There is and it starts with --

5 Q. Just answer the question.

6 MR. ALLINDER: Wait a second.

7 BY MR. GILL:

8 Q. There is a second paragraph, correct?

9 MR. ALLINDER: I want to interject
10 something. Please, both of you, let's get a question
11 out and finish it before you start your answer and
12 please let him finish his answer.

13 While I'm talking, let me object again to
14 this questioning. I think we have reached long ago
15 the point that this is completely argumentative. He
16 has answered your question.

17 He disagrees with your interpretation. If
18 you think that's unreasonable, there is a different
19 place in and a different time for to you draw that
20 conclusion, but he's answered the questions many,
21 many times.

22 BY MR. GILL:

23 Q. We're going to pursue it many, many times
24 because I don't believe he has. There are two
25 paragraphs and you do see the second paragraph, do

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1 you not, Dr. Hamm?

2 A. I do.

3 Q. The second paragraph has got only one sentence
4 in it, does it not?

5 A. That's incorrect. There are two sentences in
6 the second paragraph.

7 Q. All right. Read me the first sentence of the
8 second paragraph.

9 A. Is that a question?

10 Q. Yes. Please read me the first sentence that you
11 see in the second paragraph?

12 A. Looking at the tabulated results two areas which
13 are dangerous are incidence of emphysema after
14 smoking, the controls are free so it is reasonable to
15 conclude that smoking brings on an emphysemic
16 condition.

17 Q. With respect to that first sentence he
18 references emphysema as one of the two areas of
19 danger, does he not?

20 MR. ALLINDER: Object to the form.

21 MR. PURDY: Object to the form.

22 THE WITNESS: He did referring back to
23 his section of quarrel starting with page 8 which he
24 thinks it's wrong to take the dog results which is
25 what he's discussing here and compare them to the

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1 incidence in human beings.

2 BY MR. GILL:

3 Q. Now, do you see any danger to anyone with
4 respect to finding an incidence of emphysema after
5 smoking cigarettes?

6 MR. ALLINDER: Object to the form.

7 THE WITNESS: Could I hear that
8 question again? Are you referring to this or are you
9 now talking in general about emphysema?

10 BY MR. GILL:

11 Q. We're talking about the Hughes' memo and what
12 he's saying here.

13 A. Well, then the only thing I think he's saying
14 here is that it's dangerous to take the dog result of
15 emphysema and correlate them with the emphysema in
16 humans.

17 Q. And my question is, can you see a danger in
18 anyone in reporting incidence of emphysema occurring
19 after smoking?

20 MR. ALLINDER: Object to the form.

21 THE WITNESS: That isn't anything he's
22 saying. He's not saying don't report the incidence
23 he's saying he finds a danger in trying to
24 extrapolate dog results to human results and I agree
25 with that.

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1 BY MR. GILL:

2 Q. Dr. Hamm, the question is, sir, can you
3 appreciate how reporting an incidence of emphysema
4 after smoking cigarettes could be regarded as
5 dangerous to any entity, group of individuals, et
6 cetera?

7 MR. ALLINDER: Object to the form.

8 THE WITNESS: I don't think good
9 science properly reported is ever wrong. I don't see
10 where Hughes says don't report it. I only see Hughes
11 saying it's dangerous to take the dog results and
12 compare them to the human results.

13 BY MR. GILL:

14 Q. So you don't think that Hughes is saying that
15 it's dangerous to cigarette companies to find that
16 animals subjected to smoke or exposed to smoke
17 sustain emphysema?

18 MR. ALLINDER: Object to the form.

19 THE WITNESS: I don't see where Hughes
20 says that at all in this paragraph. I only see
21 Hughes saying that he thinks it's dangerous to take
22 dog results and compare them to the incidence in
23 humans.

24 BY MR. GILL:

25 Q. And you don't see Hughes saying that it's

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1 dangerous to cigarette companies because the controls
2 in Auerbach's experiments were emphysema --

3 MR. ALLINDER: Object to the form.

4 THE WITNESS: No. The same answer I
5 gave before; I see he thinks it's dangerous to
6 compare dog results to human results because that to
7 me is exactly what this section says.

8 BY MR. GILL:

9 Q. And you don't see Hughes saying that it is
10 dangerous that there was a similar occurrence of
11 arteriolic thickening?

12 A. I have the same response to that as the previous
13 one because he says two areas which are dangerous,
14 that being one of them.

15 He's referring to the section starting at page 8
16 where he says you're comparing dog results and human
17 results, and he says after that, this is prejudice
18 thinking and is unsound and then continues on by
19 referring -- looking at the tabulated results. So to
20 me it all goes together as one sentence.

21 Q. So again you don't think Hughes found it
22 dangerous to the interests of cigarette companies
23 that Auerbach reported a thickening of the arteries
24 of the animals that had been exposed to smoke?

25 MR. ALLINDER: Object to the form.

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1 THE WITNESS: All I can go with is
2 number three on this item that I have in front of me.
3 I don't know what Hughes thought, but as I read it he
4 specifically -- the thing he's saying is dangerous is
5 this prejudice thinking of taking dog results and
6 comparing them to human results.

7 BY MR. GILL:

8 Q. And then in paragraph number 4 Hughes indicates
9 that the Auerbach paper must affect the thinking of
10 B&W and would relegate stances on good or bad
11 statistical evaluations to second place. That's what
12 he says, isn't it?

13 MR. ALLINDER: Object to the form.

14 THE WITNESS: If you read that first
15 sentence that's what that sentence says.

16 BY MR. GILL:

17 Q. And stances on good or bad statistical
18 evaluations, that would be a reference to
19 epidemiological studies, correct?

20 MR. ALLINDER: Object to the form.

21 THE WITNESS: I have no way of knowing
22 that from what's presented here. That could relate
23 to this paper, it could be that he doesn't think the
24 statistics are wrong. I don't know what he's saying.

25 BY MR. GILL:

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1 Q. In your experience are epidemiological studies
2 often considered statistical evaluations?

3 A. Generally, whenever I've heard them referred to
4 these have been referred to as epidemiological
5 studies so I think Hughes would have used those terms
6 if that's what he meant.

7 Q. And you're not aware that the cigarette industry
8 and CTR attempted to characterize epidemiological
9 studies establishing the link between smoking and
10 disease as being simply statistical evaluations?

11 MR. ALLINDER: Object to the form.

12 THE WITNESS: Well, that may or may
13 not be the case, but statistical evaluations are used
14 in every paper so this could easily be Hughes talking
15 about evaluations in this particular paper.

16 In fact, if you go to number two he's
17 talking about the general design is open to
18 criticism, but he doesn't think it will drastically
19 alter the conclusions. So I believe in 4 he's
20 referring back to two.

21 BY MR. GILL:

22 Q. And you don't believe in 4 Hughes is making any
23 reference to the stated cigarette industry position
24 that the epidemiological studies should be dismissed
25 as being simply statistical in nature?

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1 MR. ALLINDER: Object to the form.

2 THE WITNESS: No. There is nothing
3 in here that would lead me to draw that conclusion.
4 BY MR. GILL:

5 Q. But in any event, whatever it is that Hughes
6 considers to be statistical evaluations he thinks
7 those should take second place to Auerbach's paper,
8 correct?

9 MR. ALLINDER: Object to the form.

10 THE WITNESS: It's difficult to
11 determine what this says, but it appears to me that
12 he's referring back to number 2 where he says the
13 statistical design is open to criticism, and then in
14 4 it appears to me he is saying that we shouldn't let
15 that affect us, we should go ahead and accept this
16 finding as an important finding.

17 BY MR. GILL:

18 Q. Is there any direct reference in 4 back to 2
19 such as see comment in number 2 above?

20 A. There is no direct reference to anything,
21 however, it follows right after 2 so it seems to me
22 to be a reasonable interpretation of this, and that's
23 the best I can do.

24 Q. The sentence reads "this paper." That's a
25 reference to Auerbach, do you think?

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1 A. I believe so.

2 Q. This paper must affect the thinking within B&W.
3 That's a reference that the Auerbach paper should
4 affect the position of B&W as a company.

5 MR. ALLINDER: Object to the form.

6 THE WITNESS: That's a reasonable
7 interpretation.

8 BY MR. GILL:

9 Q. And this paper would seem to use to relegate
10 stances on good or bad statistical evaluations is to
11 second place. That's what he says, correct?

12 A. I -- there are other possible interpretations,
13 some of which I have presented. I don't know. It's
14 not very -- I can't come up with that.

15 Q. So you don't think that Hughes is saying that
16 the statistical evaluations should be relegated to
17 second place behind Auerbach's paper?

18 MR. ALLINDER: Object to the form.

19 THE WITNESS: I don't know what Hughes
20 meant by this reference.

21 BY MR. GILL:

22 Q. Is this a reasonable interpretation, the one I'm
23 suggesting?

24 MR. ALLINDER: Object to the form.

25 Did you finish your answer to the last question?

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1 THE WITNESS: I did.

2 BY MR. GILL:

3 Q. Is this a reasonable interpretation that Hughes
4 is suggesting that the statistical evaluations should
5 take second place to Auerbach's paper?

6 MR. ALLINDER: Object to the form.

7 THE WITNESS: It's not to me a
8 reasonable interpretation because to take an
9 individual paper of this type and think that it has
10 that importance would surprise me, but I don't know
11 what Hughes -- how Hughes did his work, how much he
12 knew about different things.

13 BY MR. GILL:

14 Q. And then in the second sentence --

15 A. I don't know what statistical evaluations. It
16 could refer back to number 2 because he was
17 criticizing that, and it could mean we should accept
18 the paper even if we don't like the statistics. I
19 really can't do better than that.

20 Q. And the second sentence of paragraph 4 indicates
21 that the Auerbach paper could reverse the hoped-for
22 consequence of something like Project Truth. Do you
23 see that? Project Truth is in capital letters.

24 A. That's what the next sentence says.

25 Q. Do you know what Project Truth was?

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1 A. If anybody's ever told me, I don't remember. I
2 don't remember what Project Truth is.

3 Q. Assuming that Project Truth was a publicity
4 campaign to convince the public that there was still
5 an open controversy as to whether smoking causes
6 disease, Hughes would be indicating that the Auerbach
7 paper could reserve the hoped for consequences of
8 such a publicity campaign, true?

9 MR. ALLINDER: Object to the form.

10 THE WITNESS: Well, if I make that
11 assumption that may be what Hughes thought. It's
12 what Hughes wrote in number four.

13 MR. GILL: Mark this please.

14 (Plaintiffs' Deposition Exhibit No. 3517 - RJR
15 12/22/71 memo - remarked for identification.)

16 BY MR. GILL:

17 Q. Showing you what has been marked as Exhibit
18 3517, I take it you've reviewed this two page
19 memorandum prior to your deposition?

20 A. I've seen it, yes.

21 Q. This was another document provided by the State
22 of Minnesota to you?

23 MR. ALLINDER: Object to the form.

24 THE WITNESS: I believe that's
25 correct, the one I got just recently.

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1 BY MR. GILL:
2 Q. This is a memorandum on the stationary of the
3 R.J.R. Tobacco Company, correct?
4 A. That's what it appears to be.
5 Q. It appears to be an internal memo, does it not,
6 dated December 22, 1971?
7 A. That's correct.
8 Q. It's from a Murray Senkus. Do you know who he
9 was?
10 A. No, I don't.
11 Q. I want you to assume he was a scientist at
12 R.J.R. and he writes the letter to a Mr. Vassallo.
13 Do you see that?
14 A. Yes.
15 Q. And in this memo he is commenting to Mr.
16 Vassallo about a meeting that occurred at CTR,
17 correct?
18 A. That's correct.
19 Q. The meeting was to discuss further Auerbach
20 smoking experiments on dogs under sponsorship of NCI,
21 correct?
22 A. That's what it says.
23 Q. And the people attending the meeting at CTR
24 comprised of various members of the CTR staff,
25 correct?

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1 A. That's what it says.
2 Q. And Robert C. Hockett being one of them. Those
3 are the initials, RCH, that we were puzzling over
4 before. Do you see that?
5 MR. ALLINDER: Object to the form.
6 THE WITNESS: That's right.
7 BY MR. GILL:
8 Q. And then it shows two other documents from the
9 scientific staff at CTR Hoyt and Lisanti, correct?
10 MR. ALLINDER: Object to the form.
11 THE WITNESS: I see the names on the
12 form.
13 BY MR. GILL:
14 Q. Do you recognize those names as associate
15 directors of the scientific staff at CTR?
16 MR. ALLINDER: Object to the form.
17 THE WITNESS: I recognize the names.
18 I'm not sure Hoyt was a scientist.
19 BY MR. GILL:
20 Q. In addition to those people the meeting included
21 three representatives of Philip Morris, correct?
22 A. There are three representatives of Philip Morris
23 listed here.
24 Q. And two of R.J. Reynolds including Mr. Senkus?
25 A. That's what's on the form.

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1 Q. Among the Philip Morris representatives do you
2 see the name Helmut Wakeham?

3 A. I do.

4 Q. He is the author of one of the memoranda that we
5 discussed yesterday, correct?

6 A. That's correct.

7 Q. And Alex Holtzman. Do you see that name from
8 Philip Morris?

9 A. I do.

10 Q. Do you recognize who he is?

11 A. I don't.

12 Q. Do you know that he was general counsel of
13 Philip Morris?

14 MR. ALLINDER: Object to the form.

15 THE WITNESS: No, I don't know that.

16 BY MR. GILL:

17 Q. Do you know that Mr. Roemer, one of the R.J.R.
18 representatives, was an attorney of R.J.R?

19 A. I don't know.

20 Q. Now, if you would look at page 2 of the exhibit
21 that states the conclusions reached at this meeting,
22 correct?

23 A. The title of that paragraph says that.

24 Q. And when you read the paragraph it appears to
25 discuss conclusions reached at the meeting, does it

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1 not?

2 A. Yes.

3 Q. And it was concluded that there would be a
4 discussion of scientific data with Dr. Gori, correct?

5 A. That's what it says.

6 Q. And you know who he is?

7 A. I do.

8 Q. He was an administrator at NCI?

9 A. That's correct.

10 Q. He had duties involving funding decisions at
11 NCI?

12 MR. ALLINDER: Object to the form.

13 THE WITNESS: I don't know. It's a
14 funding -- there is a decision between -- but he had
15 something to do with it because he was there as a
16 scientist at NCI.

17 BY MR. GILL:

18 Q. And the people who attended this meeting were
19 going to try to convince Dr. Gori that the Auerbach
20 experiments should be abandoned?

21 A. It says --

22 MR. ALLINDER: Excuse me. Object to
23 form.

24 THE WITNESS: It says they're going to
25 provide him with the pertinent scientific data that

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1 will convince him.

2 BY MR. GILL:

3 Q. So their objective will be to convince Gori to
4 abandon funding for Auerbach's dog inhalation
5 experiments?

6 A. It says they were going to provide him with
7 pertinent scientific data and the data will convince
8 them.

9 MR. ALLINDER: Object. Form.

10 BY MR. GILL:

11 Q. To abandon funding of Dr. Auerbach?

12 A. It says discussion of the pertinent scientific
13 data with Dr. Gori will convince him that the
14 Auerbach experiments should be abandoned.

15 Q. And then they go on to state that the staff at
16 CTR will assemble the information that is to be
17 submitted to Dr. Gori, correct?

18 A. That's what it says.

19 Q. And the research directors of the tobacco
20 companies will meet with the CTR staff to prepare the
21 report that is supposed to convince Dr. Gori,
22 correct?

23 A. That's what it says.

24 Q. So you've got members of CTR and members of
25 tobacco companies, scientists and attorneys, agreeing

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1 to prepare a report in an effort to convince Dr. Gori
2 to abandon funding for Dr. Auerbach, correct?

3 MR. ALLINDER: Object to form.

4 THE WITNESS: That's what it says
5 except they're going to send him the pertinent
6 scientific data and the data will convince him.

7 BY MR. GILL:

8 Q. But it's your understanding that Dr. Auerbach
9 was pursuing the causal link between smoking and
10 disease through these dog inhalation studies, correct?

11 MR. ALLINDER: Object to the form.

12 THE WITNESS: He was working on
13 whether fresh whole smoke will cause lung cancer in
14 dogs.

15 BY MR. GILL:

16 Q. And for some reason CTR didn't want to see that
17 research go forward?

18 MR. ALLINDER: Object to the form.

19 THE WITNESS: An alternative way to
20 look at this is they were -- they had pertinent
21 scientific data that showed that the paper was flawed
22 and they wanted to present the pertinent scientific
23 data to Dr. Gori, and I don't see where that's a
24 problem.

25 I think the scientists -- we should all if
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1 we have pertinent scientific data communicate it with
2 whomever needs that data.

3 BY MR. GILL:

4 Q. And another possibility is that CTR and the
5 tobacco companies didn't want to see Dr. Auerbach
6 conduct research that would strengthen the link
7 between smoking and disease, true?

8 MR. ALLINDER: Object to the form.

9 THE WITNESS: All I can see is they
10 wanted to assemble the pertinent scientific data and
11 in my mind that's a completely legitimate thing to
12 do.

13 Q. And CTR staff was going to use the research
14 directors at the tobacco companies to assemble that
15 data for them?

16 MR. ALLINDER: Object to the form.

17 THE WITNESS: I think the staff was
18 going to assemble the data, the research directors
19 were going to prepare the final report.

20 BY MR. GILL:

21 Q. Where is your reference where the staff is going
22 to prepare the data or collect the data?

23 A. It's in the second sentence that you read to me.
24 It says the staff at CTR will assemble the
25 information that is to be submitted to Dr. Gori and

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1 the research directors are going to meet with the
2 staff to prepare the final report.

3 Q. So the final report will apparently interpret
4 the data?

5 MR. ALLINDER: Object to the form.

6 THE WITNESS: I don't know. I haven't
7 seen the final report. I don't know what it did.

8 It -- I don't know what the final report said.

9 BY MR. GILL:

10 Q. Is that a fair --

11 A. If I were in Dr. Gori's position it wouldn't
12 matter because I would investigate the scientific
13 data to see if there was any validity to it.

14 Q. And if it were presented to Dr. Gori, this
15 interpretation of the Auerbach data, he might assume
16 that the scientific advisory board was involved, true?

17 MR. ALLINDER: Object to the form.

18 THE WITNESS: I don't think Dr. Gori
19 would make such an assumption.

20 BY MR. GILL:

21 Q. I would assume knowing the CTR as he did that if
22 he was getting from CTR about Auerbach's data, it was
23 probably from the tobacco companies?

24 MR. ALLINDER: Object to form.

25 THE WITNESS: I have no information

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1 that would lead me to that. I see the research
2 directors are going to prepare the final report. For
3 all I know they put their names on the final reports.

4 But regardless of what Dr. Gori saw, he
5 wouldn't take the pertinent scientific data from
6 anybody without checking into it himself to see if,
7 in fact, it was correct.

8 BY MR. GILL:

9 Q. And we don't know whether Dr. Gori was
10 influenced to this, do we?

11 MR. ALLINDER: Object to form.

12 THE WITNESS: I don't know if Dr. Gori
13 ever got anything on this.

14 BY MR. GILL:

15 Q. But this certainly demonstrates an effort to
16 influence the thinking of Dr. Gori with regard to
17 funding Auerbach, does it not?

18 MR. ALLINDER: Object to the form.

19 THE WITNESS: It wants to provide him
20 with the pertinent scientific data which I think is a
21 completely appropriate thing to do.

22 BY MR. GILL:

23 Q. Plus a report on that data, correct?

24 A. It says there will be a final report, but I have
25 no information of what that report will be.

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1 Q. But apparently the tobacco company research
2 directors will get to write the report?

3 MR. ALLINDER: Object to the form.

4 THE WITNESS: It basically says
5 they're going to meet -- it says the CTR is going to
6 assemble it and then they're going meet with the
7 staff to prepare the final report, but I don't know
8 the mechanism.

9 I doubt they wrote it. I think though since
10 they're the scientific directors, they know a lot
11 about smoking and health, their input would be very
12 useful.

13 BY MR. GILL:

14 Q. The sentence says that the research directors
15 will prepare the final report, does it not?

16 A. It does say that. It says -- no, it doesn't say
17 that. It says they will meet with the CTR staff to
18 prepare the final report, so I don't know who
19 prepared the final report. They're going to meet
20 with the staff to prepare the final report.

21 Q. So at the very least the research directors are
22 going to have input into the final report?

23 A. That's what appears to me.

24 Q. And do you recognize a potential conflict of
25 interest on the part of the scientific directors of

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1 the tobacco companies with whether funding is
2 provided to Dr. Auerbach for smoke inhalation studies
3 that might establish the link?

4 MR. ALLINDER: Object to the form.

5 THE WITNESS: Just as Dr. Gori would
6 realize the source of this information and Dr. Gori
7 would go ahead and look into this pertinent
8 scientific data to determine for himself whether it
9 was pertinent scientific data.

10 BY MR. GILL:

11 Q. Now, in the Frank Statement the formation of
12 TIRC is basically dedicated to the public interest,
13 is it not?

14 MR. ALLINDER: Object to the form.

15 THE WITNESS: I hate to have to go
16 back to that again. It seemed to me that the Frank
17 Statement says the companies are dedicated to the
18 public interest and as part of that they're going to
19 form a committee and they're going to give them a
20 fund that they can use to do research.

21 BY MR. GILL:

22 Q. And your interpretation of the Frank Statement
23 is the tobacco companies are saying we are dedicated
24 to the public interest?

25 A. I believe --

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1 MR. ALLINDER: Object to the form.

2 THE WITNESS: Correct.

3 BY MR. GILL:

4 Q. Is it in the public interest to have research
5 directors of tobacco companies attempting to
6 influence an agency of the US government as to
7 whether it should provide funding to a researcher
8 who's attempting to determine if smoking causes lung
9 cancer?

10 MR. ALLINDER: Object to the form.

11 THE WITNESS: Absolutely if there is
12 pertinent scientific data that would affect that
13 decision. That pertinent scientific data should be
14 communicated to whomever has an interest in this.

15 BY MR. GILL:

16 Q. Do you know whether Dr. Auerbach ever attempted
17 to get some funding from CTR?

18 A. Other than you gave us another one sheet
19 informing -- handwritten information, but other than
20 that I don't think -- I don't have any idea whether
21 Dr. Auerbach tried to get funding from CTR.

22 MR. GILL: Let's mark this.

23 (Plaintiffs' Deposition Exhibit No. 3338 - 2/10/72
24 handwritten memo - marked for identification.)

25 BY MR. GILL:

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1 Q. Showing you Exhibit 3338. Is this a one page
2 handwritten note that you saw in preparation for your
3 deposition?

4 A. This is one of the things that was given to us
5 recently.

6 Q. It's dated February -- February 10, 1972?

7 A. That's correct.

8 Q. I'll tell you that this document was produced
9 from the files and records of Philip Morris and --

10 MR. ALLINDER: Object to the form.

11 THE WITNESS: I'll have to accept that
12 because there is absolutely nothing on here that
13 designates it other than a handwritten note.

14 BY MR. GILL:

15 Q. Actually the Bates number would designate, but I
16 want you to assume the Bates stamp number came from
17 the documents of Philip Morris. It says Senkus
18 called, correct?

19 A. I see that.

20 Q. And he's the scientist at R.J.R?

21 MR. ALLINDER: Object to the form.

22 THE WITNESS: I saw that.

23 BY MR. GILL:

24 Q. And the call included your -- the call concerned
25 Auerbach's new dog inhalation project, correct?

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1 A. That's what it says.

2 Q. And apparently Senkus told the author that as
3 far as Senkus understood it, it was not likely that
4 CTR would provide funding for any testing by
5 Auerbach, correct?

6 MR. ALLINDER: Object to the form.

7 THE WITNESS: That's not what it says.
8 It says that this anonymous person put down that Ramm
9 says it's not likely. We will do a parallel test.

10 BY MR. GILL:

11 Q. Do you know who Ramm is?

12 A. I do.

13 Q. Who is he?

14 A. He's at CTR.

15 Q. Is he the chief executive officer of CTR in
16 1972?

17 A. I don't know.

18 Q. Do you know what Ramm did before February of
19 1972 when he was at CTR?

20 MR. ALLINDER: Object to the form.

21 THE WITNESS: I always hate when I get
22 to this point because I should know this, but I
23 don't. I think he was a lawyer.

24 BY MR. GILL:

25 Q. Did you know he was the general counsel for one
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1 of the tobacco companies?

2 A. That's what I meant by saying I thought he was a
3 lawyer.

4 Q. So he went from the top inside lawyer in a
5 tobacco company to being the CEO of CTR?

6 MR. ALLINDER: Object to the form.

7 THE WITNESS: I don't remember -- I
8 remember he's a lawyer and I remember he's at CTR,
9 but I don't know if he's the CEO or if there even is
10 such a designation.

11 BY MR. GILL:

12 Q. Now the SAB is supposed to make recommendations
13 with respect to whether funding requests will be
14 funded, correct?

15 MR. ALLINDER: Object to the form.

16 THE WITNESS: That's correct.

17 BY MR. GILL:

18 Q. But even before the SAB has met with regard to
19 this request for funding by Auerbach, Ramm is
20 apparently telling Senkus that it's not likely that
21 CTR is going to fund this project, correct?

22 MR. ALLINDER: Object to the form.

23 Misstatement of facts. The document does speak for
24 itself.

25 BY MR. GILL:

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1 Q. Is that a fair interpretation?

2 A. The document says that, but I would guess that I
3 would have said the same thing because the scientific
4 advisory board is not going to approve a project
5 where they know there is serious problems with it.

6 Q. Do you know whether CTR ever did fund Auerbach
7 on any dog inhalation studies?

8 A. I don't think they did.

9 MR. ALLINDER: Objection to the
10 question. Objection to the form.

11 BY MR. GILL:

12 Q. And if you're right then Senkus' comment
13 regarding Ramm's prediction was accurate?

14 MR. ALLINDER: Objection to the form.
15 The whole line of questioning is based upon a
16 misstatement of the facts.

17 THE WITNESS: I would expect that no
18 one would have funded this project because there were
19 serious problems, and that the so-called tumors have
20 never been proven to be tumors, and these studies are
21 extremely expensive to do. That model is a very
22 difficult model.

23 So I would be surprised if anybody funded
24 this. Now, Auerbach wasn't kept from trying to get
25 funding from any place he wanted to get it, but his

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1 problem was his data was not good enough to get
2 funding.

3 BY MR. GILL:

4 Q. But the amount of funding Auerbach would have
5 needed for another dog inhalation study might have
6 been too much to expect the tobacco industry to pay
7 for; is that what you're saying?

8 MR. ALLINDER: Object to the form.

9 THE WITNESS: No. I'm saying that you
10 certainly wouldn't embark on a set of very expensive
11 studies when you knew, in fact, there were no tumors.

12 MR. GILL: Why don't we break.

13 (Recess taken.)

14 BY MR. GILL:

15 Q. Dr. Hamm, have you agreed to testify as an
16 expert witness in the Texas tobacco case?

17 A. I have been asked and I'm listed in several
18 cases, but I can't testify in all of them so it will
19 depend on which cases proceed and so forth, but Texas
20 is one of them.

21 Q. Texas is one you're planning to be a witness?

22 A. If I'm needed.

23 Q. And you haven't been deposed in that case?

24 A. No, I have not.

25 MR. GILL: Would you mark this?

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1 (Plaintiffs' Deposition Exhibit No. 3339 - CTR
2 handwritten memo - marked for identification.)
3 BY MR. GILL:
4 Q. Showing you, Dr. Hamm, what's been marked as
5 Exhibit 3339, do you recognize that as a document
6 that you reviewed in preparation for this deposition?
7 A. It's one of the documents that was provided late
8 last week and I have reviewed it.
9 Q. These are some handwritten notes from a CTR
10 meeting of the executive committee that occurred on
11 November 30, I believe it's 1970?
12 A. Every copy I have -- it was sometime in the
13 seventies, but from the ones I've looked at --
14 Q. You'll notice that one of the people attending
15 the meeting was C.C. Little. Do you see that on the
16 right side?
17 A. I do.
18 Q. Since he left CTR in '71 this would apparently
19 be in November of '70 or '71; does that seem fair?
20 A. That seems fair.
21 MR. ALLINDER: I assume you know on
22 this and every other document we have a continuing
23 objection. The document speaks for itself.
24 MR. GILL: That's correct.
25 BY MR. GILL:

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- 1 Q. Now, the author of this tries to say the
2 everyone sat around the conference table in this
3 meeting; is that how it appears?
4 A. He listed them and it appears that's where they
5 were sitting. It has four columns with a table, but
6 I assume.
7 Q. Now, how many of these names do you recognize?
8 A. Hardy.
9 Q. Who is Hardy?
10 A. He was a member of Shook, Hardy & Bacon I think.
11 Q. A named partner in the law firm?
12 A. There are probably a lot of parties, but I would
13 assume that's who that was.
14 Q. Who else?
15 A. Who was he? Shimm is --
16 Q. Who was he?
17 A. He may have been with Shook Hardy & Bacon too.
18 Q. As a partner in that law firm?
19 A. I don't know.
20 Q. At least that he's an attorney with that law
21 firm?
22 A. That's my memory. I could be wrong.
23 Q. Who else do you recognize?
24 A. Hockett.
25 Q. We have discussed him. Who else?

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1 A. Little.
2 Q. Scientific director of CTR at the time, correct?
3 A. I don't know for certain, but I would assume
4 that's the case. Adison Yaman, but he's a member of
5 CTR. Finnegan I believe was a --
6 Q. Do you know what Yaman did before he became a
7 member of CTR?
8 A. I think he may have been a lawyer.
9 Q. For who?
10 A. I don't know.
11 Q. Brown & Williamson?
12 A. I don't really study which lawyers and where
13 they work and so forth.
14 Q. So it doesn't ring a bell?
15 A. It rings a bell that he's a lawyer, but I don't
16 know which company and I could be wrong. Sometimes I
17 have trouble remembering which are scientific
18 directors and which are lawyers and so forth.
19 Q. Other names that you recognize?
20 A. That's the main ones I recognize other than I
21 have seen this before so I've seen all of these --
22 I've seen the table and all these people, but I
23 haven't figured out who they all are.
24 So other than seeing this document, I am not
25 familiar with the names here.

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1 Q. How about the name Kornegay on the left side?
2 A. No, I don't know who that is.
3 Q. Are you familiar with The Tobacco Institute?
4 A. I've heard of The Tobacco Institute.
5 Q. Do you know that's a trade association of the
6 Tobacco Industry?
7 A. I don't know what its designation is.
8 Q. Do you see any tobacco company CEOs listed as
9 sitting around the table during the executive
10 committee meeting of CTR?
11 A. Well, I'm going to guess a lot of them up in the
12 front rows around the table. That's where they're
13 going to have their seats, but I don't remember.
14 Q. Without guessing do you recognize any of those
15 names?
16 A. I don't know the CEO's of any of the companies.
17 Q. Do you recognize any of the general counsel for
18 any of the tobacco companies as identified around the
19 table?
20 A. Except for Hoyt and Ramm up at the top, I've
21 already told you of everybody I know. I didn't
22 notice them before. I apologize.
23 Q. Now, assuming that the people at this meeting
24 included several tobacco company chief executive
25 officers and several tobacco company general counsel,
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1 are you surprised that they are sitting with the CTR
2 management in an executive committee meeting of that
3 organization?

4 MR. ALLINDER: Object to the form.

5 THE WITNESS: I don't know the
6 composition of the executive committee and it
7 wouldn't surprise me that they're members of it if
8 they're members, if they're visitors. I don't know
9 how that committee is composed.

10 BY MR. GILL:

11 Q. And it wouldn't surprise you that attorneys from
12 Shook, Hardy & Bacon were attendees at an executive
13 committee meeting of CTR?

14 MR. ALLINDER: Object to the form.

15 THE WITNESS: I think that's what I
16 said. It doesn't surprise me because I don't know
17 why they're there, why they're invited. Meetings I
18 go to, lots of people are invited. I don't know
19 whether they're regular meetings, whether they're
20 invited.

21 BY MR. GILL:

22 Q. Do you see anybody's name that suggests to you
23 that that individual is there as a representative of
24 the public?

25 MR. ALLINDER: Object to the form.

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1 THE WITNESS: I think everybody
2 represents the public interest, and I think the Frank
3 Statement says everything to that effect so I think
4 probably everybody here represents the public.

5 BY MR. GILL:

6 Q. So you think this was a meeting of individuals
7 who were there to discuss the work of CTR in the
8 public interest?

9 MR. ALLINDER: Object to the form.

10 THE WITNESS: That's, in fact, what I
11 think the Frank Statement said.

12 BY MR. GILL:

13 Q. Now, would you expect that the people attending
14 meetings of the executive committee of CTR would be
15 establishing the policies and positions of CTR as an
16 organization?

17 MR. ALLINDER: Object to the form.

18 THE WITNESS: I really don't know
19 anything about the executive committee of CTR, but I
20 would assume since most executive committees do those
21 kinds of things that's maybe what they did, but I'm
22 just guessing. I have no idea what the executive
23 committee of CTR did.

24 BY MR. GILL:

25 Q. Would you expect that basically the executive

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1 committee of CTR would be running the organization in
2 terms of establishing policy and giving direction?

3 MR. ALLINDER: Object to the form.

4 Asked and answered.

5 THE WITNESS: I don't really know what
6 the executive committee did. Most executive
7 committees have the power to set policies and so
8 forth.

9 As far as running an organization, that's
10 usually done by staff so I would guess staff ran the
11 organization and this may have been a policy making
12 group.

13 BY MR. GILL:

14 Q. You would expect staff to run the organization
15 based upon the policy direction from management?

16 MR. ALLINDER: Object to the form.

17 THE WITNESS: That's basically how
18 most organizations function.

19 BY MR. GILL:

20 Q. Apparently at this meeting Mr. Ramm was elected
21 chairman. Do you see that?

22 A. It says that.

23 Q. Do you assume that's chairman of CTR?

24 A. I could make that assumption. It isn't
25 specified. He's elected chairman of something. I

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1 assume it's this meeting. He's sitting up there at
2 the front of the table as well.

3 Q. And there were a number of other reports that
4 were apparently given at this meeting?

5 A. According to whoever wrote this that's what
6 transpired.

7 Q. If you would turn to the Bates stamp page that
8 ends in the numbers 480. There are some comments
9 there by the author that apparently pertain to
10 statements made during the meeting by Mr. Ramm as
11 indicated on the preceding page; is that correct?

12 MR. ALLINDER: Can you give me a
13 reference?

14 BY MR. GILL:

15 Q. To page 479. Ramm makes statement and the
16 author summarizes Ramm's statement on that page, and
17 then continuing on to the page that ends with the
18 Bates stamp 480.

19 A. I have no way to know. Ramm is definitely
20 mentioned on the previous page. I have no way of
21 knowing if this is a continuation of Ramm.

22 Q. Well, if we go to page 481 now the author is
23 attributing statements to Walker. Do you see that?

24 A. That's correct.

25 Q. And at least between pages 479 and 481 there is
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1 no other reference there to the speaker, Ramm?

2 A. That's correct. That still doesn't lead me to
3 believe that I can be confident these were Ramm
4 statements.

5 Q. It's definitely a possibility based upon the way
6 the notes have been drafted, correct?

7 A. It's a possibility, but there are many other
8 possibilities as well.

9 Q. Which of the other attendees at the meeting do
10 you see as potential declarers for any of the notes
11 that appear on Bates stamp page 480?

12 MR. ALLINDER: Object to the form.

13 THE WITNESS: I don't know all of
14 these people well enough to know nor was I at the
15 meeting so it's probably difficult for me to tell you
16 who made these, but there are many statements that
17 any of them could have made.

18 BY MR. GILL:

19 Q. Well, some of the statements on page 480
20 apparently deal with attempting to find a replacement
21 for Dr. Little as scientific director. Do you see
22 that at the bottom of the page?

23 A. Still page 3?

24 Q. Yes. It's numbered page 3 in the notes and it's
25 Bates stamp page ending with the digits 480.

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1 A. They do list some potential -- it says
2 scientific directors other candi. which I assume is
3 candidates, and it lists four other individuals.
4 Q. Does it seem reasonable to you that the chairman
5 of the committee would be commenting upon the search
6 for a new scientific director?

7 MR. ALLINDER: Object to the form.

8 THE WITNESS: He could be or anybody
9 else at the meeting equally could be. There is no
10 way for me to know based on what's presented to me
11 who made these statements.

12 BY MR. GILL:

13 Q. Well, in terms of conducting the search for
14 scientific director to replace Dr. Little is it your
15 expectation that that search would have been
16 conducted by the CTR as opposed to being conducted by
17 one of the tobacco companies?

18 MR. ALLINDER: Object to the form.

19 THE WITNESS: I don't know how they
20 pick scientific directors, but I thought Little was
21 picked by the tobacco company so I don't know who
22 picked the next director.

23 I honestly don't know what the mechanism
24 was of CTR.

25 BY MR. GILL:

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1 Q. But you understand the tobacco companies picked
2 Little?

3 A. I don't know that. I'm basing that on the Frank
4 Statement in that it seemed to me that that's what
5 they did; they formed the TIRC and they were going to
6 pick a scientist of impeccable reputation. I don't
7 know what the mechanism was to do that.

8 Q. All right. Going to the middle of the page that
9 has the Bates stamp 480 there is some comment right
10 in the middle of the page.

11 First of all, it starts out, expect more
12 contract research. Do you see that?

13 A. Yes, I do.

14 Q. So apparently the speaker was telling the
15 committee that CTR would be moving toward more
16 contract research, correct?

17 MR. ALLINDER: Object to the form.

18 MR. PURDY: Object.

19 THE WITNESS: Well, it says expect
20 more contract research. It isn't in context, but I
21 could assume that's what he's talking about.

22 BY MR. GILL:

23 Q. And then the speaker goes on to say that Little
24 has served well. Do you see that?

25 A. I do.

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1 Q. And then there is a comment that the SAB might
2 leave contracts to the scientific director. Do you
3 see that?

4 A. I see that.

5 Q. Does that indicate to you that the SAB may leave
6 it up to the scientific director to decide on which
7 contracts to let --

8 MR. ALLINDER: Objection.

9 THE WITNESS: All it says to me is
10 somebody, who I don't know who it is, said the
11 scientific report might leave contracts to the
12 scientific director.

13 It doesn't say whether it happened, will it
14 happen. Somebody mentioned that that might be
15 something that might happen.

16 BY MR. GILL:

17 Q. Is that a fair interpretation as far as you're
18 concerned that the scientific director may wind up
19 selecting the contract research projects without the
20 advice of the SAB?

21 MR. ALLINDER: Object to the form.

22 THE WITNESS: I don't think it says
23 that at all. It says the scientific advisory board
24 might leave contracts to the scientific director so
25 it may mean the scientific board might let him manage

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1 them.

2 It doesn't say that they're not going to
3 pick him. It could be interpreted a number -- it
4 isn't very precise.

5 BY MR. GILL:

6 Q. Then the next statement reads, expect scientific
7 director to be dedicated to the "truth." Do you see
8 that?

9 A. I see that.

10 Q. In other words, the author in indicating that
11 the scientific director should be dedicated to the
12 truth; he has put the word truth in quotes, correct?

13 A. No. The person who wrote this put truth in
14 quotes.

15 Q. The author put truth in quotes?

16 A. The author of this document?

17 Q. Yes.

18 A. Yes. The author of this document has put truth
19 in quotes because it's right here on this page.

20 Q. And certainly you would have no problem with the
21 proposition that the scientific director of the CTR
22 ought to be dedicated to the truth?

23 MR. ALLINDER: Object to the form.

24 THE WITNESS: I don't have any problem
25 with everybody being dedicated to the truth.

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1 BY MR. GILL:

2 Q. And with respect -- one of the primary if not
3 the primary duty of CTR as an organization is to fund
4 research that will address issues of smoking and
5 health, correct?

6 A. That's one of their duties. They could
7 have any number of other duties as far as I know.

8 Q. But the Frank Statement indicates that that's a
9 primary duty, if not the most important duty, of this
10 new organization, does it not?

11 MR. ALLINDER: Object to the form.

12 THE WITNESS: I would have to look at
13 that again, but I think I remember that it was a
14 duty. It doesn't specify there wouldn't be other
15 duties.

16 BY MR. GILL:

17 Q. But the Frank Statement did call attention to
18 the pledge to have the TIRC sponsor research into all
19 phases of tobacco use and health. Do you recall
20 that?

21 A. I recall that they set up a fund that the SAB
22 would advise people to be used to look into all
23 phases of tobacco health and research, but I don't
24 remember them saying that they couldn't do other
25 things.

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1 Q. And which other things do you remember being
2 mentioned in the Frank Statement that the CTR might
3 be doing?

4 MR. PURDY: Object to the form.

5 THE WITNESS: I don't remember any
6 others, but I don't remember that the Frank Statement
7 said this will be the only thing they'll be doing
8 either.

9 BY MR. GILL:

10 Q. Now, in terms of conducting or sponsoring
11 research into all phases of issues pertaining to
12 tobacco and health it would be very important to get
13 to the truth with respect to whether smoking causes
14 disease, true?

15 MR. ALLINDER: Object to the form.

16 THE WITNESS: Good science properly
17 reported is good for everybody.

18 BY MR. GILL:

19 Q. But specifically with regards to the mission of
20 this organization, TIRC and later CTR, it wouldn't do
21 the public any good to sponsor research into smoking
22 and health if the organization were dedicated to
23 promoting the private interests of its owners, would
24 it?

25 MR. ALLINDER: Object to the form.

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1 THE WITNESS: The Frank Statement
2 simply said they're going to put together -- fund the
3 money to investigate tobacco.

4 They didn't say what they could or couldn't
5 do otherwise, and I've never known any other
6 organization, the Cancer Institute, of anybody who
7 simply has a single mission. They do a lot of
8 different things.

9 BY MR. GILL:

10 Q. Just so we're communicating here, Dr. Hamm, for
11 purposes of these questions I'm not interested in
12 what you feel the other missions might have been of
13 the CTR.

14 As long as you think that, at least one of their
15 missions was to sponsor research into all phases of
16 the issues affecting smoking and health. Is that
17 your understanding?

18 A. It depends on how you're using all. It seems to
19 me in your questions you're using all phases meaning
20 anything that has to do with tobacco and health,
21 anything that has to do with this mechanism, and I
22 don't think the Frank Statement suggests that at all.

23 Q. I'm not at all. I'm simply suggesting that to
24 the extent that this organization were to engage in
25 any activity at all, some of that activity would be

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1 directed toward pursuing research into all phases of
2 smoking and health; is that your understanding?

3 A. They did establish a fund that was to be used to
4 study tobacco and health and that was one of the
5 functions of this organization.

6 Q. And obviously with regard to that function of
7 this organization it wouldn't do the public any good
8 unless the organization was dedicated to finding out
9 the truth with respect to issues of smoking and
10 health; do you agree?

11 A. All science should be directed at finding out
12 the truth.

13 Q. And if this organization was dedicated to simply
14 attempting to promote the private interests of the
15 tobacco companies that own the organization then the
16 conduct of this TIRC would certainly not be amicable
17 to the public interest, true?

18 MR. ALLINDER: Object to the form.

19 THE WITNESS: If that is simply all
20 they were doing then that would not be a good thing,
21 but we already agreed that one of the things they
22 were doing was sponsoring good research in search of
23 the truth.

24 BY MR. GILL:

25 Q. I don't recall we already agreed that, Dr. Hamm,
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1 but with regard to pursuing research, the research
2 with regard to smoking and health, would either be
3 dedicated toward trying to find the real answers to
4 those issues or dedicated to something less than
5 that, correct?

6 MR. ALLINDER: Object to the form.

7 THE WITNESS: I think all research
8 should be directed towards trying to find the truth.
9 BY MR. GILL:

10 Q. And for some reason the author in making this
11 statement that the scientific director should be
12 dedicated to the "truth" chose to use quote marks
13 around the word truth, correct?

14 MR. ALLINDER: Object to the form.

15 THE WITNESS: That's what is in this
16 document.

17 BY MR. GILL:

18 Q. Now, you've seen quote marks used to suggest a
19 double meaning to words, have you not?

20 MR. ALLINDER: Object to the form.

21 THE WITNESS: I've also seen them used
22 to highlight words. It may be because he was trying
23 to give the exact word -- he may be exactly quoting
24 what whoever said this said, so it may be an exact
25 quote. There are a lot of interpretations of quotes.

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1 BY MR. GILL:

2 Q. And it may be that the author is referring to
3 the need for the scientific director to be dedicated
4 to the truth as the tobacco companies would wish to
5 have the truth portrayed, correct?

6 MR. ALLINDER: Object to the form.
7 Calls for speculation.

8 THE WITNESS: There is no way I could
9 tell what was on the mind of this individual who
10 wrote this down.

11 BY MR. GILL:

12 Q. Now, if the scientific directors of the CTR were
13 going to be dedicated to the truth only to the extent
14 that the tobacco companies wished to portray certain
15 truth then the scientific director would simply be
16 operating as a pawn for the tobacco industry, true?

17 MR. ALLINDER: Object to the form.

18 THE WITNESS: Are you asking me can I
19 tell from this document if there is any kind of a way
20 I can tell that was what was happening?

21 BY MR. GILL:

22 Q. No. This question doesn't relate specifically
23 to the document. It simply asks you whether the
24 scientific director would be acting as a pawn of the
25 tobacco industry if he was dedicated to the truth

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1 only as the tobacco companies wished to portray.

2 MR. ALLINDER: Object to the form.

3 THE WITNESS: There is way too many
4 assumptions in that question for me because for all I
5 know -- truth is truth and I don't know what you mean
6 by how the tobacco companies want to portray the
7 truth.

8 BY MR. GILL:

9 Q. Well, do you recall our discussion this morning
10 that sometimes scientific data can be interpreted
11 differently?

12 A. I wasn't talking at that time though that it
13 could be interpreted to help what you already want to
14 prove.

15 What I'm talking about is it could be
16 interpreted differently because scientists can
17 honestly disagree about the data.

18 Q. Definitely scientists can honestly disagree
19 about the integrity of data, but self interest can be
20 motivated to twist the interpretation of data, to
21 twist the data?

22 MR. ALLINDER: Object to the form.

23 THE WITNESS: It's possible for
24 corporations that aren't well led, but to try to take
25 a scientific area and try to make it come out the way

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1 you want is not in the best interests of your
2 company.

3 BY MR. GILL:

4 Q. At least you don't think it is?

5 MR. ALLINDER: Object to the form.

6 THE WITNESS: I don't think that it is
7 any good in the best interest of anyone to try to
8 make science come out to some preconceived notion.

9 BY MR. GILL:

10 Q. But you don't know what the views of the
11 management of tobacco companies might be on that same
12 issue?

13 A. I would expect since they're intelligent people,
14 that they realize that it doesn't do any good to do
15 science, if you're asking for a pre-determined answer
16 at the end, science doesn't work that way.

17 Q. But if the word truth on page 480 of Exhibit
18 3339 was meant to imply that the scientific director
19 of CTR would be doing the bidding of the tobacco
20 industry, that would be an indication that CTR
21 operated in a fraudulent way, true?

22 MR. ALLINDER: Object to the form.

23 THE WITNESS: It's speculation because
24 I don't know that -- I can't imagine that any such
25 thing could ever have happened, and so I don't think

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1 the quotations around there -- I think they're around
2 there because it is the truth they're after.

3 This is a direct quote of whoever was
4 talking and/or he's highlighting this; that this is
5 what we're after is the truth.

6 Q. Look a little further down the same page in the
7 next paragraph. Do you see a reference by the author
8 that the speaker has indicated that legal counsel
9 will interview the candidates for scientific
10 director?

11 MR. ALLINDER: Object to the form.

12 THE WITNESS: It says and it's --
13 legal is underlined.

14 BY MR. GILL:

15 Q. Looks like a T crossed from the word before?

16 A. Legal counsels interview and scientific research
17 directors of companies can give valuable assistance,
18 and I can't read -- something.

19 BY MR. GILL:

20 Q. To put that statement in context, Dr. Hamm,
21 because you want to have everything in context, do
22 you not?

23 MR. ALLINDER: Object to the form.

24 THE WITNESS: Not necessarily, but it
25 certainly helps.

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1 BY MR. GILL:

2 Q. In this particular paragraph it starts out
3 indicating that a company called Spencer Stuart &
4 Associates is searching for a replacement to Dr.
5 Little. Essentially that's what it's indicating,
6 correct?

7 A. It doesn't say that specifically. I would hate
8 to make an assumption of that.

9 Q. Well, in terms of our author is taking notes of
10 what a speaker is saying when he writes Spencer
11 Stuart & Associates searching, and then he lists a
12 Dr. Philip Hadays in Philadelphia and fifty other
13 candidates.

14 Does that suggest to you that this search firm
15 is searching for a new scientific director?

16 MR. ALLINDER: Object to the form.

17 THE WITNESS: That's a reasonable
18 interpretation. It's five other candidates instead
19 of fifty however.

20 BY MR. GILL:

21 Q. You're correct. What I thought was a zero is
22 the letter O. So there is Dr. Hadays and five other
23 candidates, correct?

24 A. That's what this handwritten note says.

25 Q. And then on the very next line it says legal

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1 counsel's interview and scientific research directors
2 of companies can give valuable assistance, correct?

3 A. That's what it says.

4 Q. And apparently give valuable assistance with
5 regard to the search for the new scientific director?

6 MR. ALLINDER: Object to the form.

7 THE WITNESS: All the assumptions I've
8 made so far, that would fit.

9 BY MR. GILL:

10 Q. And if legal counsel is going to be interviewing
11 prospective candidates for the scientific director
12 position is it your assumption that it's legal
13 counsel for the tobacco companies?

14 A. It's not very specific, but I would assume
15 that's what they're talking about. It could be legal
16 counsels for CTR.

17 Q. But legal counsel for the tobacco company would
18 obviously have a singular interest with regard to
19 serving their clients and that would be to advance
20 their clients' interests, correct?

21 MR. ALLINDER: Object to the form.

22 MR. PURDY: Object to the form.

23 THE WITNESS: I don't know enough
24 about all the things lawyers do in corporations to
25 know if they're advocates for their clients. There

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1 is all kinds of different lawyers I assume, so I
2 honestly don't know.

3 BY MR. GILL:

4 Q. But to the extent that lawyers for tobacco
5 companies are going to be involved in interviewing
6 candidates for the scientific director position, does
7 that suggest to you that they're looking for someone
8 whose views on science and health and smoking and
9 health would be suitable to their clients' interests?

10 MR. ALLINDER: Object to the form.

11 THE WITNESS: It doesn't suggest
12 anything to me other than that they're going to
13 interview.

14 It says legal counsel's interview. I don't
15 know what motives or whatever of these legal counsel.
16 I assume they would vary from counsel to counsel and
17 so forth.

18 BY MR. GILL:

19 Q. Now the people doing the interviewing of
20 candidates for this position I assume would want to
21 be interested in the qualifications of the
22 candidates, correct?

23 A. I assume so.

24 Q. And the candidate for this position should be a
25 scientist, correct?

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1 A. That's what it's set up to be.

2 Q. So we have got a situation where lawyers are
3 going to be interviewing candidates for a scientific
4 position?

5 A. That's what this handwritten note says.

6 Q. And interested in the qualifications of those
7 scientists to fill that position?

8 MR. ALLINDER: Object to the form.

9 THE WITNESS: I can't tell what
10 they're interested in. It simply says they're going
11 to interview them.

12 BY MR. GILL:

13 Q. Is it reasonable to assume the lawyers are
14 interested in advancing the interests of their
15 clients?

16 MR. ALLINDER: Object to the form.

17 Asked and answered.

18 THE WITNESS: I don't know what the --
19 all I know is that they're going to interview them.
20 I don't know what their purpose for doing this
21 interview is.

22 BY MR. GILL:

23 Q. Now, if the lawyers for the tobacco companies is
24 interviewing the candidates for scientific director
25 wanted to be sure that the new scientific director

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1 would do the bidding of the tobacco companies that
2 would involve the use of CTR for a fraudulent
3 purpose, would it not?

4 MR. PURDY: Object to the form.

5 MR. ALLINDER: Object to the form.

6 THE WITNESS: I don't have any way to
7 know, and I don't think legal counsels are looking
8 for someone to do the bidding. The Frank Statement
9 says they're looking for --

10 BY MR. GILL:

11 Q. Unimpeachable integrity as determined by the
12 lawyers?

13 A. That can be determined by a variety of people.
14 It doesn't have to be by any particular group. This
15 is also -- scientific research directors are going to
16 give valuable assistance.

17 Q. Scientific research directors for the tobacco
18 companies will give this valuable assistance?

19 A. That's correct.

20 Q. Can we agree, Dr. Hamm, that if the person
21 selected to be the scientific director were expected
22 to do the bidding of the tobacco companies with
23 respect to the execution of his duties, that would
24 involve the fraudulent use of CTR as an organization
25 to advance the cigarette companies's interests?

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1 MR. ALLINDER: Object to the form.

2 MR. PURDY: Object to the form.

3 THE WITNESS: I can think of one
4 reason why that obviously would be untrue in that if
5 the bidding in the tobacco companies is that we want
6 you to do the best science and report it, that
7 certainly wouldn't be fraudulent.

8 BY MR. GILL:

9 Q. You understand what's meant by the term, do the
10 bidding for someone, do you not?

11 MR. ALLINDER: Object.

12 BY MR. GILL:

13 Q. If you're doing someone's bidding you're
14 attempting to --

15 MR. ALLINDER: Object to the form.
16 Could you ask the question more clearly?

17 BY MR. GILL:

18 Q. Do you understand that the term do the bidding
19 means, advance the interests of your sponsor are?

20 MR. ALLINDER: Object to the form.

21 THE WITNESS: And in my opinion if I
22 were the leader of a tobacco company I would make
23 this individual do my bidding to do good science
24 which would advance my interests.

25 BY MR. GILL:

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1 Q. I completely understand, Dr. Hamm, but you're
2 not and never have been the CEO of a tobacco company,
3 true?

4 A. That's correct.

5 Q. Now, I want to ask you a hypothetical question
6 and see if you're able to answer it. If the person
7 selected to be the scientific director were expected
8 to do the bidding of the tobacco companies in terms
9 of advancing their interests as his primary
10 responsibility that would be wrong, would it not, Dr.
11 Hamm?

12 MR. ALLINDER: Object to the form of
13 the question.

14 MR. PURDY: Object.

15 THE WITNESS: No, it would not be
16 wrong. The tobacco company would ask me to do its
17 bidding to do outstanding science which would be in
18 their interests and that is not fraud in any way.

19 BY MR. GILL:

20 Q. And if the type of bidding that the tobacco
21 company wanted a scientific director to do was to
22 advance the economic interests of the tobacco
23 companies by continuing to suggest that there was an
24 open controversy as to whether cigarettes cause
25 disease that would be wrong, would it not?

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1 MR. ALLINDER: Object to the form of
2 the question.

3 THE WITNESS: The advancement of their
4 interests can only be advanced in this mechanism by
5 doing good science.

6 BY MR. GILL:

7 Q. But you understand that it's conceivable that
8 the tobacco companies didn't understand or agree with
9 your assessment?

10 MR. ALLINDER: Object to the form.

11 THE WITNESS: I have no way of knowing
12 what they wanted this person to do.

13 BY MR. GILL:

14 Q. And I want you to assume, Dr. Hamm, if you're
15 capable of doing it --

16 MR. ALLINDER: Object to the form.

17 BY MR. GILL:

18 Q. -- that the tobacco companies were interested in
19 hiring a scientific director for CTR whose main
20 responsibilities would be to advance their economic
21 interests. Are you with me so far?

22 A. Is this going to be a question?

23 Q. Yes.

24 A. I'm with you so far.

25 Q. If that were the intent, that would be wrong,

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1 would it not?

2 MR. ALLINDER: Object to the form.

3 Asked and answered.

4 THE WITNESS: It's so long a
5 question, I'll have to listen again to tell.

6 MR. GILL: Read it please.

7 (Record read.)

8 THE WITNESS: I think good science
9 does advance their economic interests, so therefore I
10 think the companies are going to try to find out just
11 as in the Frank Statement.

12 BY MR. GILL:

13 Q. What if they want them to advance bad science,
14 would that be wrong?

15 MR. ALLINDER: Now we have a different
16 question.

17 THE WITNESS: I think it's wrong to
18 try to advance bad science regardless of who's doing
19 it.

20 BY MR. GILL:

21 Q. Thank you. Now, you've reviewed certain
22 documents that pertain to the research that Dr.
23 Homburger performed for CTR in connection with
24 hamster inhalation studies, true?

25 A. I have.

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1 Q. And Dr. Homburger picked up in the wake of the
2 mice inhalation studies that had been done by the
3 Leuchtenbergers, correct?

4 MR. ALLINDER: Object to the form.

5 THE WITNESS: I don't believe so. He
6 did some of his own mouse inhalation studies, but
7 then he started doing Hamster studies.

8 I don't think he was directly -- although I
9 think he may have helped at one point help test the
10 Leuchtenbergers' machine, but I don't think it could
11 be described as taking up in the wake of the
12 Leuchtenbergers at all.

13 BY MR. GILL:

14 Q. Dr. Homburger was attempting to determine if the
15 exposure of smoke would cause tumors in the lungs of
16 hamsters, correct?

17 MR. ALLINDER: Object to the form.

18 THE WITNESS: That's basically what he
19 was trying to do.

20 BY MR. GILL:

21 Q. And in the course of doing that work Dr.
22 Homburger felt that he discovered that the hamsters
23 had sustained cancerous lesions of their larynxes,
24 correct?

25 A. That's what Dr. Homburger thought.

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1 Q. And Dr. Homburger told CTR that he wanted to
2 publish a paper that would contain findings to that
3 effect, correct?

4 MR. ALLINDER: Object to the form.

5 THE WITNESS: I don't know
6 specifically what Dr. Homburger told CTR. I know he
7 was attempting to publish papers in this area.

8 BY MR. GILL:

9 Q. Have you read Dr. Homburger's depositions in any
10 case?

11 A. I have.

12 Q. Didn't Dr. Homburger indicate in those
13 depositions that he wanted to publish findings of
14 laryngeal cancer with respect to those hamsters?

15 MR. ALLINDER: Object to the form.

16 THE WITNESS: He said he wanted to
17 and, in fact, he did publish those papers.

18 BY MR. GILL:

19 Q. And he let the CTR know what his intentions were
20 before he published any papers, didn't he?

21 MR. ALLINDER: Object to the form.

22 THE WITNESS: I said before, I don't
23 know what he let CTR know. I don't know how
24 Homburger and CTR related on him telling them he
25 wanted to publish a paper.

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1 BY MR. GILL:

2 Q. Well, didn't Homburger have a contract with CTR?

3 A. I think he did.

4 Q. Wasn't he required to let CTR know what it was
5 he was intending to publish?

6 A. I've never read his contract. That's a typical
7 contract.

8 Q. Is that your understanding?

9 A. That's typical of contracts.

10 Q. Is that your understanding from reading the
11 Homburger's depositions?

12 MR. ALLINDER: Object to the form.

13 THE WITNESS: It's a long deposition.

14 I honestly don't remember exactly what Homburger said
15 about what he tried to do to fulfill his contractual
16 obligation.

17 BY MR. GILL:

18 Q. But Homburger testified before he published
19 anything an attorney named Finnegan representing CTR
20 came to visit him about what he was going to write in
21 his paper. Do you recall that?

22 A. I think that's one of the things Homburger has
23 alleged.

24 Q. And he's alleged that Finnegan did not want
25 Homburger to use the word cancer in his paper,

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1 correct?

2 MR. ALLINDER: Object to the form.

3 THE WITNESS: I can't remember. He
4 may have alleged that, but I think it was Dr. Sommers
5 the pathologist who had more of an objection to that
6 lesion.

7 BY MR. GILL:

8 Q. Well, if Dr. Homburger's allegations are true
9 then that conduct would be consistent with attempting
10 to express information that might have established a
11 causal link between smoking and lung cancer or
12 laryngeal cancer, correct?

13 MR. ALLINDER: Object to the form.

14 THE WITNESS: No, it doesn't. It's
15 the same situation as that. It doesn't make any
16 sense to publish erroneous information and laryngeal
17 cancer is much less likely to be able to form a
18 causal relationship to lung cancer.

19 They may be very different mechanisms for
20 all anybody knows so it may be a model for laryngeal
21 cancer, but that's very debatable based on -- many
22 people other than Dr. Sommers don't agree those are
23 cancer.

24 BY MR. GILL:

25 Q. As a model for laryngeal cancer that might have

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1 been very interesting information to smokers, correct?

2 MR. ALLINDER: Object to the form.

3 THE WITNESS: The information was
4 published in the open literature and smokers had
5 access to that information.

6 BY MR. GILL:

7 Q. And Dr. Homburger has testified that he didn't
8 describe the laryngeal lesions in the paper in the
9 way that he had originally intended to, correct?

10 MR. ALLINDER: Object to the form.

11 THE WITNESS: I don't think that's
12 correct. I think, in fact, he did -- his allegation
13 is that they told him to call it something else, but
14 I think he went ahead and called it what he wanted to
15 call it.

16 BY MR. GILL:

17 Q. Well, isn't his allegation that he disregard
18 what they asked him to call it which didn't include
19 the word cancer and he called the lesions
20 micro-invasive cancers?

21 A. I don't think that is what he called them.

22 Q. You don't think he called the lesions
23 micro-invasive cancers or micro-invasive tumors in
24 the laryngea of the hamsters?

25 MR. ALLINDER: Object to the form.

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1 THE WITNESS: I can't think of the
2 exact words he used, but my memory of his deposition
3 is that he was asked to change that and he didn't;
4 he went ahead and published it with the words he
5 wanted to use.

6 BY MR. GILL:

7 Q. He apparently for some reason completely
8 invented the idea that he change the wording of his
9 paper from what he originally intended to write; is
10 that your understanding?

11 MR. ALLINDER: Objection to the form
12 of the question.

13 THE WITNESS: That's not my
14 understanding.

15 BY MR. GILL:

16 Q. He definitely complained that he was the target
17 of what he considered to be improper influence, did
18 he not?

19 A. He has claimed that, yes.

20 Q. And your understanding is that he also publicly
21 stated that he went ahead anyway and used exactly the
22 terminology that he always intended to; is that your
23 understanding.

24 MR. ALLINDER: Object to the form.

25 THE WITNESS: I think that's what he

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1 said. I'm not certain of that.

2 BY MR. GILL:

3 Q. So if his actual testimony was that he did alter
4 what he intended to say, you simply have a
5 misunderstanding of how this dispute occurred,
6 correct?

7 A. No. I have an understanding of how the dispute
8 occurred because when he began to talk about these
9 lesions, people that looked at them didn't think that
10 they were cancer, and so Dr. Sommers attempted to
11 communicate that to him in a variety of ways.

12 I don't remember the exact scenario, but I
13 thought that he changed it back to the words he
14 wanted to use prior to the final publication. That
15 may not be right.

16 BY MR. GILL:

17 Q. Well, his paper was published, was it not?

18 A. It was.

19 Q. And your view is that only positive findings
20 usually get published, correct?

21 MR. ALLINDER: Object to form.

22 THE WITNESS: It's more difficult,
23 but, in fact, the Cancer Institute published all of
24 their negative as well as their positive findings,
25 but in the open literature it's more difficult.

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1 But a positive finding may be -- it may be
2 positive for a whole kind of things other than the
3 way you seem to use positive.

4 It seems to me you use positive as it's
5 some kind of causal link to cancer caused by
6 cigarette smoke, but there are many other positive
7 results in many experiments.

8 His input has not really been accepted by
9 anyone else and at best it was a good indication for
10 laryngeal cancer, but many do not think that.

11 BY MR. GILL:

12 Q. And CTR refused to fund any further study of
13 whether his work constituted a model laryngeal
14 cancer, true?

15 MR. ALLINDER: Object to form.

16 THE WITNESS: I don't know if he ever
17 applied. I don't know if he ever didn't get -- I
18 don't think he was funded that I know for a laryngeal
19 cancer experiment by anybody, but I don't know that.

20 I don't know if CTR -- I think they funded
21 him past this point, but I don't know what the basis
22 of that funding was.

23 BY MR. GILL:

24 Q. If you don't know what the basis of that funding
25 was what's the basis for thinking it was funded?

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1 MR. ALLINDER: Object to the form.

2 THE WITNESS: I thought I saw he was
3 still getting money after this all occurred, but I
4 could wrong about that.

5 But what people were trying to establish
6 was a model of lung cancer.

7 He had not established such a model so it
8 would not make sense to continue to fund it.

9 BY MR. GILL:

10 Q. Well, you've stated a number of times that if a
11 scientist is victimized by a funding sponsor, you
12 would expect that the scientist would complain,
13 correct?

14 A. Scientists might complain for a variety of other
15 reasons as well.

16 Q. But is that one of the reasons that you've
17 expressed many times in this deposition that a
18 scientist would complain?

19 A. They would. I also would like to say that I
20 don't consider trying to give a scientist information
21 that would make him have a better paper is
22 victimized.

23 I would consider it the normal process of a
24 sponsor and a grantor even, but in certainly a
25 contractee.

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1 Q. And in the normal process as you see it of a
2 sponsor and a contractor you would expect an attorney
3 from an outside law firm on behalf of the sponsor to
4 visit the researcher and attempt to persuade the
5 researcher to use certain language in the
6 researcher's interpretation of the data?

7 MR. ALLINDER: Objection to form.
8 Misstates facts.

9 BY MR. GILL:

10 Q. Is that what you're saying?

11 A. I don't know if that, in fact, did happen. And
12 if it did happen, the attorney was sufficiently
13 knowledgeable about this issue.

14 I don't see where it would be a problem because
15 attorneys present information on a whole variety of
16 things to a whole variety of people.

17 Q. So all you would ask is that this attorney
18 finish began have a scientific background to be able
19 to tell whether the lesion in the larynx of a hamster
20 would be cancerous or not?

21 MR. ALLINDER: Object.

22 THE WITNESS: Which say that at all
23 he could be accepting the knowledge of Dr. Sommers
24 and I don't know that Finnegan, in fact, ever did
25 this.

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1 BY MR. GILL:

2 Q. Well, if Finnegan did it are you suggesting that
3 as long as some doctor had told Finnegan I don't
4 think the lesions are cancerous that it would be
5 appropriate for Finnegan as a lawyer to attempt to
6 persuade the researcher to change the language in the
7 researcher's paper?

8 MR. ALLINDER: Object to the form.

9 THE WITNESS: If and I didn't say it
10 was only Dr. Sommers who didn't think these lesions
11 were cancer, many other people as well.

12 But if people gave Mr. Finnegan -- I don't
13 know this happened -- but if they gave him the
14 appropriate information and he understood what he was
15 there to do then he could have done it.

16 He could have been there for a variety of
17 other reasons, something to do with the contracts.
18 But it wouldn't bother me at all if a lawyer came to
19 me and provided me with some information that was
20 scientifically correct about one of my papers.

21 BY MR. GILL:

22 Q. How many times has a lawyer visited you and
23 asked you to re-write your paper?

24 MR. ALLINDER: Object to the form.

25 THE WITNESS: I can't think of a time

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1 that's happened, but it wouldn't matter to me who
2 brought the news. I would look at the news.

3 BY MR. GILL:

4 Q. And it didn't even happen to you when you worked
5 for four years for an industry research group in
6 chemicals?

7 MR. ALLINDER: Object to the form.

8 THE WITNESS: I said it hasn't ever
9 happened to me that I'm aware of. Now, I don't
10 always know all the people that -- I've had papers
11 rejected and I've had all kinds of comments come
12 back.

13 I've never looked to see if any were
14 lawyers but I don't know of any time when that's
15 happened to me personally. I don't know, in fact, if
16 this happened to Dr. Homburger.

17 BY MR. GILL:

18 Q. So CTR didn't agree with the evaluation that the
19 Leuchtenbergers had made of their data, correct?

20 MR. ALLINDER: Object to the form.

21 THE WITNESS: No, I don't think that's
22 correct at all. They agreed with lots of the
23 findings of the Leuchtenbergers. They didn't agree
24 that they had found cancer because they hadn't.

25 BY MR. GILL:

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1 Q. And CTR didn't agree that Dr. Homburger had
2 found cancer?

3 MR. ALLINDER: Object to the form.

4 THE WITNESS: Not only CTR but neither
5 has any other part of the scientific community
6 agreed. This has not become a major model of
7 laryngeal cancer in the intervening years.

8 Anyone who wants to fund that work can, but
9 the problem is that lesion is probably not a cancer.

10 BY MR. GILL:

11 Q. Well, the peer reviewers for Dr. Homburger's
12 paper apparently thought enough of his findings to
13 approve publication, correct?

14 A. That's correct but the publication process is
15 not perfect so their reasonable scientists can
16 reasonably agree.

17 Dr. Homburger may, in fact, be correct and may
18 be at some point proven to be correct, but currently
19 the majority of scientists do not believe that lesion
20 is cancer.

21 But that doesn't mean -- that's how science
22 works. More information may come in the future.

23 BY MR. GILL:

24 Q. And the way CTR worked was every time one of
25 it's researchers thought they had found cancer CTR --

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1 MR. ALLINDER: Object to the form.

2 THE WITNESS: They should look at the
3 data and if they don't agree with the interpretation
4 they should relay that to the contract.

5 I looked into that data because I wanted to
6 see if I thought they were doing something wrong, did
7 they do something inappropriate and I don't believe
8 that's the case.

9 I agree with what they thought about that
10 data as do many other scientists.

11 BY MR. GILL:

12 Q. Are you a pathologist yourself?

13 A. My Ph.D. is in comparative pathology but I don't
14 work principally as a pathologist. I do work as an
15 expert in animal use though, and there are many
16 things that can cause that lesion.

17 Q. When did you get your hands on the original
18 slides of Dr. Homburger in order to make this
19 acknowledge list?

20 MR. ALLINDER: Objection. Misstates
21 his testimony.

22 THE WITNESS: No one has gotten a
23 hold of his original slides that I'm aware of and
24 that would be a very useful if Dr. Homburger really
25 wants to prove that he is, in fact, correct.

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1 BY MR. GILL:

2 Q. But CTR disagreed with the interpretation of the
3 Leuchtenbergers and the interpretation of Dr.
4 Homburger regarding findings of cancer?

5 MR. ALLINDER: Object to the form.
6 Asked and answered.

7 THE WITNESS: I think that --

8 BY MR. GILL:

9 Q. Did they agree or disagree?

10 A. They did not disagree with all of the findings.
11 They disagreed with certain of those findings.

12 Q. I'm asking about findings of cancer.

13 A. In the case of the Leuchtenbergers, they thought
14 those are sufficiently suggestive of cancer that they
15 wanted to fund more studies, so many more studies
16 were done along with the Leuchtenbergers help.

17 Q. But they didn't want the Leuchtenbergers
18 publishing any paper claiming to have found cancer?

19 MR. ALLINDER: Object to the form.

20 THE WITNESS: The Leuchtenbergers, in
21 fact, did, in fact, publish that data.

22 BY MR. GILL:

23 Q. But CTR didn't want them to publish it, did
24 they?

25 A. Could I finish?

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1 Q. As long as it's responsive.

2 MR. ALLINDER: We're running over each
3 other again on the record, and we do need to have a
4 little break between the question and answer, vice
5 versa.

6 MR. PURDY: I would like to give you
7 the opportunity, so maybe --

8 MR. GILL: Let me withdraw the last
9 question so we can move on since time is rolling
10 short.

11 BY MR. GILL:

12 Q. I'll try to make this question narrow and if you
13 could simply answer the specific question Dr. Hamm.
14 CTR disagreed with the findings of the
15 Leuchtenbergers regarding cancer in the
16 Leuchtenbergers mice, true?

17 MR. ALLINDER: Object to the form.

18 THE WITNESS: That is not correct.

19 The CTR.

20 BY MR. GILL:

21 Q. Fine.

22 A. I would like to answer the question. What CTR
23 did was they agreed with many of the findings of that
24 study.

25 They knew that there were enough problems with

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1 the study that they could not be certain that cancer
2 had been proven and they communicated that
3 information.

4 The Leuchtenbergers accepted that and agreed to
5 work in a concentrated effort to try to do more
6 studies to try to look at that point.

7 Q. And what published document did CTR state that?

8 MR. ALLINDER: Object to the form.

9 THE WITNESS: Some of the documents
10 that you've given me today provide much of that
11 information.

12 BY MR. GILL:

13 Q. That's your interpretation of some of the
14 documents that I've given you today?

15 MR. ALLINDER: Object to the form.

16 THE WITNESS: As well as those
17 documents, there are the published works of the
18 Leuchtenbergers, the fact that they provided the
19 Snell mice to Microbiological Associates, the
20 contract documents from Microbiological Associates
21 show how they selected the mouse and so on.

22 So there is plenty -- everything I have
23 seen at least supports the fact that the
24 Leuchtenbergers were working in conjunction with CTR
25 to expand their findings.

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1 BY MR. GILL:

2 Q. And you mentioned yesterday an incident where a
3 public relations agent for CTR reported back to CTR
4 about preventing Dr. Homburger from holding a press
5 conference at a seminar of some kind. Do you recall
6 that?

7 A. Did you ask me if I mentioned that?

8 Q. Forget the question. Have you reviewed any
9 documents that suggested that somebody named Saun
10 acted to prevent Dr. Homburger from holding a press
11 conference?

12 A. I have seen that.

13 Q. Do you understand that Saun was working for CTR?

14 A. I think that's correct.

15 Q. And that Saun reported to CTR on that incident?

16 A. I don't know who he reported to. I have to take
17 the document at it's face value.

18 Q. And that that document indicated that Saun was
19 taking credit for this conduct as something that CTR
20 should be pleased with?

21 MR. ALLINDER: Object to the form.

22 THE WITNESS: He also had in there
23 that he had given the information to the society and
24 the society had made the decision that they agreed
25 with the information as well.

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1 So it seemed to me to be the society's
2 decision not to allow the press conference.

3 BY MR. GILL:

4 Q. Let's just focus on the conduct of this public
5 relations agent. Is this perfectly acceptable
6 conduct as far as you're concerned for a public
7 relations agent for CTR to interfere with Dr.
8 Homburger's expectations of conducting a press
9 conference to explain his research?

10 MR. ALLINDER: Object to the form.

11 THE WITNESS: If somebody is going to
12 produce information that anybody thinks is wrong I
13 think anybody has the right to produce the evidence.
14 So he produced the evidence.

15 The society agreed that the evidence was
16 strong enough that they're the ones that canceled the
17 conference, so --

18 BY MR. GILL:

19 Q. So you see nothing inappropriate about the
20 conduct of this public relations agents with respect
21 to Dr. Homburger's attempt to hold a press conference?

22 MR. ALLINDER: Object to the form.

23 Misstates his testimony.

24 THE WITNESS: I don't think it's ever
25 wrong for anybody who has information that science is

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1 wrong to provide that evidence to whomever needs that
2 evidence.

3 BY MR. GILL:

4 Q. And in this situation whatever means were
5 employed would justify the end of preventing some
6 researcher from attempting to publicly communicate
7 some information that someone thought was wrong?

8 A. That's not what I said. I said providing
9 scientific evidence was appropriate and an
10 organization like that is in the position to evaluate
11 that evidence and they made the decision not to hold
12 the press conference.

13 Q. What scientific evidence did Mr. Saun present to
14 the organization in support of his request that the
15 organization cancel the press conference for Dr.
16 Homburger?

17 A. I have no way of knowing that I could assume
18 they presented some of the papers and so forth and
19 people who are familiar with that lesion would
20 realize that that's not cancer.

21 Q. And you're willing to make all of those
22 assumptions to justify the conduct of Mr. Saun?

23 MR. ALLINDER: Object to the form.

24 THE WITNESS: I'm not justifying his
25 conduct. I've said though I don't have a problem

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1 with anyone providing scientific evidence to somebody
2 and letting them decide for themselves what they want
3 to do with it.

4 BY MR. GILL:

5 Q. And you don't know what scientific evidence was
6 provided?

7 A. I don't.

8 Q. And you don't know if he provided any?

9 MR. ALLINDER: Object to the form.

10 THE WITNESS: I don't know that that
11 memo is even authentic.

12 BY MR. GILL:

13 Q. That memo may be fraudulent?

14 A. I have no idea what the origin of that memo is.

15 Q. And that's the way you have viewed that
16 particular instance, the memo may be a forgery;
17 that's one possibility?

18 MR. PURDY: Object to the form.

19 THE WITNESS: No, I have not done
20 that at all.

21 BY MR. GILL:

22 Q. If the memo is reeling from the files and
23 records of CTR or one of the tobacco companies you
24 nevertheless find absolutely no fault with Mr. Saun
25 using whatever means he may have used to prevent

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1 Homburger from holding a press conference?

2 MR. ALLINDER: Object to the form.

3 Misstates his testimony.

4 THE WITNESS: I do not approve of
5 whatever means, but I don't have any problem of
6 providing scientific evidence to an organization that
7 can evaluate that evidence.

8 They don't like the evidence they don't
9 have to do anything. So whatever he gave them --
10 according to the memo at least. I don't even know
11 that this happened.

12 In fact, in Homburger's deposition he said
13 it never happened.

14 BY MR. GILL:

15 Q. He was never aware of it, was he? In fact, Saun
16 pointed out in his memo that Homburger never even
17 knew what had happened, did he?

18 MR. ALLINDER: Objection.

19 THE WITNESS: I don't know if it's in
20 the memo or not. That's not how Homburger
21 characterized it in his deposition.

22 BY MR. GILL:

23 Q. Then Saun told the addressees of his memo that
24 they might want to destroy the memo after they read
25 it?

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1 MR. ALLINDER: Object to the form.

2 THE WITNESS: The final sentence in
3 there does say that.

4 MR. GILL: This was previously marked
5 as 3518, so let's remark it as 3518.

6 (Plaintiffs' Deposition Exhibit No. 3518 - 2/20/74
7 Homburger letter - remarked for identification.)

8 BY MR. GILL:

9 Q. Showing you Exhibit 3518, this is a two page
10 letter you've seen prior to your deposition?

11 A. That's correct.

12 Q. In this letter Dr. Homburger complains to Dr.
13 Gardner who is then the scientific director of CTR
14 about the unwillingness of CTR to fund additional
15 Hamster studies, correct?

16 A. Let me have just a minute to review this please.
17 Would you ask me that question again?

18 Q. Dr. Homburger complains to Dr. Gardner in this
19 letter, does he not?

20 MR. ALLINDER: Excuse me. Object to
21 the form. About what?

22 THE WITNESS: Yeah. A complaint
23 about --

24 BY MR. GILL:

25 Q. As far as you can tell from your review of this
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1 letter is Dr. Homburger complaining about anything to
2 Dr. Gardner in this letter?

3 A. It sounds more like a letter trying to get him
4 to give him some more money.

5 Q. And in the course of that if, in fact, that's
6 part of Dr. Homburger's motives does he assert any
7 complaints if you can find any there, anything that
8 you would regard as a complaint?

9 MR. PURDY: Object to the form. The
10 document speaks for itself.

11 THE WITNESS: Well, he demands an
12 apology, but that's the closest to any kind of a
13 complaint I can see.

14 BY MR. GILL:

15 Q. All right. How about this sentence, the last
16 one in the letter, it could be inferred that you wish
17 to suppress rather than to encourage scientific
18 investigation directed at the second most important
19 associated respiratory carcinoma of man end of
20 quote. Did I read that correctly?

21 A. You did.

22 Q. That's not a complaint as far as you're
23 concerned?

24 MR. ALLINDER: Object.

25 THE WITNESS: That sounds more like a

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1 statement to me.

2 BY MR. GILL:

3 Q. Statement of fact?

4 A. If you want to make it a complaint, I don't
5 think it makes much difference.

6 Q. Would you regard this as a statement of fact by
7 Dr. Homburger?

8 MR. ALLINDER: Objection to the form.

9 THE WITNESS: This is Dr. Homburger's
10 statement of what he feels, but I don't really
11 think -- it doesn't sound to me like a complaint.

12 BY MR. GILL:

13 Q. But this is a case in which a scientist is, in
14 fact, speaking up and suggesting that the funding
15 sponsor has acted badly, correct?

16 MR. PURDY: Object to the form.

17 THE WITNESS: It sounds to me more
18 like a person trying to get a sponsor to give him
19 some more money. These kinds of letters are common.

20 BY MR. GILL:

21 Q. Well, would suppression of scientific
22 investigation be considered a bad thing in your mind?

23 MR. ALLINDER: Object to the form.

24 THE WITNESS: If -- no one should
25 suppress any scientific investigation. Dr. Homburger

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1 and it's a poor way to try to get some more money is
2 accusing people of that, but I don't -- it's a
3 statement that he's making.

4 It sounds still more to me like he wants
5 some more to do some more studies.

6 BY MR. GILL:

7 Q. So it would be highly unusual in your experience
8 for a scientist to write a letter like this to a
9 funding sponsor accusing the sponsor of suppressing
10 scientific information?

11 MR. ALLINDER: Object to the form.

12 THE WITNESS: I am not an authority
13 nor do I read all of the letters sent by scientists
14 but it is not a great way to try to get somebody to
15 give you more money I don't think.

16 BY MR. GILL:

17 Q. And in the next to the last paragraph of the
18 letter, still on page 2, Dr. Homburger points out
19 that in his research studies involving smoke
20 inhalation of hamsters he wasn't even expecting to
21 make any findings with regard to the larynx. Do you
22 see that?

23 MR. ALLINDER: Object to the form.

24 THE WITNESS: He says that, but then
25 it gets a little shaky when he refers to Dontenwill's

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1 work where Dontenwill found this same lesion which
2 most people do not think is cancer, so he's already I
3 think in this sentence given away that he was trying
4 to replicate Dontenwill's work and he has another
5 strain of hamster.

6 BY MR. GILL:

7 Q. So your interpretations that even though Dr.
8 Homburger says that he made an unexpected finding of
9 a high incidence of laryngeal cancer that, in fact,
10 you believe Dr. Homburger was looking to replicate
11 the work of Dontenwill because he mentions Dontenwill
12 in the sentence?

13 MR. ALLINDER: Object to the form.

14 THE WITNESS: I would have to go back
15 and look at the exact timing of this. This may
16 be when he did find the higher incidence compared to
17 Dontenwill, but he was aware of Dontenwill's work and
18 he was attempting to do some more work in that area.

19 BY MR. GILL:

20 Q. And in that same sentence Homburger suggests
21 that the active pursuit of his research into
22 laryngeal cancer is something that the CTR owes to
23 the general public. Do you see that?

24 A. That's Dr. Homburger's view and now it's more
25 like the letter I was describing earlier where he's

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1 asking for more money.

2 Q. But he may also be expressing a heartfelt
3 opinion that based upon his understanding of what he
4 thought CTR stood for, it owed it to the general
5 public to pursue the findings that he had made,
6 correct?

7 MR. ALLINDER: Object to the form.

8 THE WITNESS: Any organization that's
9 funding anything has finite resources, and they have
10 to make decisions of what they will and won't fund.

11 They were trying to find a lung cancer
12 model and expending a lot of money to do that.

13 So you would have to ask -- I don't know
14 what the decision -- I don't know if Homburger ever
15 asked for more money normally or what the decision
16 was.

17 BY MR. GILL:

18 Q. But the implication of Homburger's comments to
19 Dr. Gardner about what CTR owes to the general public
20 is that Homburger thought that CTR was actually
21 dedicated to trying to learn whether smoking caused
22 various types of cancer, true?

23 MR. ALLINDER: Object to the form.

24 THE WITNESS: The CTR, as I said
25 earlier, any funding agency can't fund every project

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1 and most people don't think that this is a cancer in
2 the first place let alone a cancer of the larynx.

3 And there is other problems with these
4 studies that would make it difficult for a funding
5 agency to give them more money and that's probably
6 evidence because I don't think Dr. Homburger although
7 I think he tried with many agencies no one else
8 funded this work either so I don't think the Cancer
9 Institute or anybody else funded this.

10 All of them owe something to the general
11 public, but funding decisions have to be made based
12 on what might lead to some information that can
13 actually help the public and the resources are very
14 limited.

15 BY MR. GILL:

16 Q. Do you agree that laryngeal cancer was the
17 second most common form of cancer at that time?

18 A. I believe that that's the case but it's at a
19 much, much lower incidence than lung cancer so lung
20 cancer was still the most important one and that's
21 the model they were trying to develop.

22 Q. And in developing an animal model for laryngeal
23 cancer due to exposure to smoke would have been a
24 very, very significant finding with respect to the
25 causal relationship between smoking and laryngeal

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1 cancer, true?

2 MR. ALLINDER: Object to the form.

3 THE WITNESS: Models are needed for
4 all aspects of this complex issue but Dr. Homburger
5 in the view of most scientists including up until
6 today had not developed a model even of laryngeal
7 cancer and he's done other work in this area that
8 tended to support the fact that it's not a good
9 model.

10 So all the people who are making funding
11 decisions have to take that into account when they're
12 making a funding decision.

13 BY MR. GILL:

14 Q. But back in February of 1974 even assuming that
15 what you just said is correct about current day
16 knowledge, they had no way of knowing what the next
17 twenty-three years of research might yield on the
18 subject of laryngeal cancer, correct?

19 MR. ALLINDER: Object to the form.

20 THE WITNESS: I'm sorry. I must have
21 confused you with my answer. I thought I said people
22 knew this in 1974 and we haven't changed our mind
23 here in 1997.

24 BY MR. ALLINDER:

25 Q. So as far as you can tell back in February of

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1 1974 the great overwhelming consensus of the
2 scientific community was your not going to develop an
3 animal model for laryngeal cancer so don't waste
4 money trying?

5 MR. PURDY: Objection to the form
6 misstatement.

7 MR. ALLINDER: Object to the form.

8 THE WITNESS: I didn't say that
9 either. I simply said that I think Dr. Homburger
10 attempted to get funding from a variety of places to
11 develop this model and none was interested that I
12 know of funding because of the fact that none thought
13 he had a model so far.

14 Even his paper itself leads you to believe
15 that he did not have a model.

16 BY MR. GILL:

17 Q. Well, we don't know what other sources of
18 funding Dr. Homburger sought for this project, but
19 clearly CTR was not interested in funding it, true?

20 MR. ALLINDER: Object to the form of
21 the question.

22 THE WITNESS: I don't know if Dr.
23 Homburger ever asked them. I have this letter which
24 is somewhat of a call for funds but one that is not
25 going to be very successful.

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1 BY MR. GILL:

2 Q. Well, this letter seems to indicate that his
3 request for funds to pursue his work on laryngeal
4 cancer with Hamsters has already been denied, does it
5 not?

6 A. Could you point me to somewhere in the letter
7 where it says that?

8 Q. On the second page when he talks about that CTR
9 owes it to the public to pursue this and accuses CTR
10 of suppressing scientific information.

11 MR. ALLINDER: Object to the form.

12 THE WITNESS: I still don't know
13 whether Dr. Homburger officially applied for a grant
14 or what may or may not have happened.

15 BY MR. GILL:

16 Q. That language doesn't imply to you that
17 Homburger had sought funding from CTR and had been
18 rejected.

19 MR. ALLINDER: Object to the form.

20 THE WITNESS: It implies to me that
21 he's talked to Dr. Gardner about this. It doesn't
22 imply to me that anybody at CTR has seen any kind of
23 a proposal.

24 So I don't know if Dr. Gardner said
25 something. I don't know if he sent something in that

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1 wasn't funded.

2 BY MR. GILL:

3 Q. Does it at least imply that Dr. Gardner the
4 scientific director appears to be very negative on
5 the idea of funding for this project?

6 MR. ALLINDER: Object to the form.

7 THE WITNESS: Well, it's a big
8 inference. I don't know exactly what Dr. Homburger
9 is trying to accomplish with this.

10 He definitely wanted to keep working on his
11 model and I don't know -- I thought he in fact had
12 some more money after this point in time, but I'm not
13 certain of that either.

14 BY MR. GILL:

15 Q. Now, another researcher who has complained about
16 interference from CTR in the publication of her
17 research work was Dr. Henry, correct?

18 MR. ALLINDER: Object to the form.

19 THE WITNESS: I think that's correct.

20 BY MR. GILL:

21 Q. And she was joined in her complaints by Dr.
22 Kouri who was also one of the program directors for
23 that work action, correct?

24 MR. ALLINDER: Object to the form.

25 THE WITNESS: I think that's correct.

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1 BY MR. GILL:

2 Q. And the work we're talking about is the lifetime
3 mice inhalation study funded by CTR at
4 Microbiological Associates, correct?

5 A. That's correct.

6 MR. ALLINDER: Could we break before
7 we get into that?

8 (Recess taken.)

9 BY MR. GILL:

10 Q. Now, Dr. Hamm, did you receive prior to this
11 deposition some affidavits that were signed by Drs.
12 Henry and Kouri with respect to their experience on
13 this lifetime mice inhalation study in CTR?

14 A. Yes, I did.

15 Q. And had you previously read any sworn testimony
16 by Dr. Henry either in deposition or affidavit form
17 on the same issue?

18 A. I've read both of those affidavits -- both of
19 those I've read previously and I've seen the
20 deposition of Dr. Henry.

21 Q. And Dr. Henry complained in her deposition of
22 what she regarded as an inappropriate attempt to
23 influence her by Mr. Finnegan, the lawyer
24 representing CTR, correct?

25 A. She did.

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1 Q. And it was her position that she didn't know
2 that CTR was planning to publish a book based upon
3 the data that had been developed from the inhalation
4 test that she had directed, correct?

5 A. She says that. I found that very surprising
6 because technical reports are frequently published.

7 Q. It would also be surprising if a funding source
8 published a book with technical data and didn't even
9 let the author of the data know about it?

10 A Yesterday I told you about how we did it at the
11 Cancer Institute, and that's exactly how we did it.

12 So the names were listed in the front, but they
13 turned the data over to a company that helped write
14 the report.

15 We then polished it up and they printed it as a
16 technical report and we didn't ask for their
17 permission or anything.

18 Q. Or even ask for a courtesy copy?

19 A. I believe Dr. Kouri who says she did get a
20 courtesy copy.

21 Q. Doesn't Dr. Henry say he got one only when he
22 found out about the blue book having been issued and
23 he requested one?

24 A. You asked me about Dr. Henry and you used he.
25 Are you --

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1 Q. Dr. Kouri.

2 A. Dr. Kouri as I remember his affidavit says he
3 got a book and I don't think he asked for it.

4 Q. He got a courtesy copy is your understanding?

5 A. It's my understanding and I think Dr. Henry said
6 in hers that she had to request one.

7 Q. Now, Dr. Sommers added a forward in the book to
8 the report that it been prepared by Dr. Henry?

9 MR. ALLINDER: Object to the form.

10 THE WITNESS: The report I think was
11 prepared by Henry and Kouri and he did insert a one
12 paragraph introduction or I don't know what you would
13 call his comment in the front of the book.

14 BY MR. GILL:

15 Q. He calls it a forward, does he not?

16 A. I don't remember what he called it.

17 Q. And Dr. Henry and Kouri have both stated in
18 sworn testimony that Mr. Finnegan attempted to edit
19 their final report, correct?

20 MR. ALLINDER: Object to the form.

21 THE WITNESS: I would have to look at
22 their affidavits more carefully, but I remember them
23 saying that Dr. Finnegan and Dr. Gardner were
24 involved in that report, and I don't think they say
25 that -- they say -- I think Henry says that Finnegan

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1 was involved -- she says something like they
2 apparently had editing power over the report or
3 something to that effect.

4 BY MR. GILL:

5 Q. And that Finnegan instructed her not to include
6 any interpretation of the data in the report?

7 A. That's not what she says. She says that he --
8 she shouldn't put any -- and speculation may be the
9 wrong word, but it was relating to humans.

10 So it doesn't say she can't interpret the
11 findings regarding rodents I don't believe and, in
12 fact, if you look at the report there is pages and
13 pages and pages of their interpretations.

14 Q. Well, any extrapolation from the report by Dr.
15 Henry to humans could certainly adversely affect the
16 industry of the cigarette companies, correct?

17 MR. ALLINDER: Object to form.

18 THE WITNESS: Good science properly
19 reported is in the best interest of the companies and
20 I don't think -- it's fairly common in technical
21 reports not to speculate on those and wait for the
22 publication which then Henry did publish in JNCI
23 which that speculation was included and thereby
24 communicated to the public.

25 BY MR. GILL:

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1 Q. By speculation are you referring to the
2 interpretation by Dr. Henry that the study indicated
3 that cigarette smoke was weakly carcinogenic to mice?

4 A. Speculation probably has a real definition. I
5 would have to look it up, but I definitely do not
6 believe the study was positive, and I do believe that
7 to say that she even has evidence that it's a weak
8 carcinogenic is not correct based on the data in the
9 blue book.

10 Q. That's what Dr. Henry published in her paper
11 issued two years after the blue book?

12 A. That's correct. She took a subset of the data
13 and published a part of it, and said that this proved
14 that the compound was weakly carcinogenic and JINC
15 did publish it.

16 Q. Well, in her discussion which appeared in the
17 National Cancer Institute, the discussion of her
18 research, she makes the statement that findings from
19 the research support the conclusions that cigarette
20 smoke is weakly carcinogenic to mice, correct?

21 A. She says that and I don't agree with that
22 statement.

23 Q. And she says that without any limitation
24 regarding just one particular subset of her
25 experimental data, correct?

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1 MR. ALLINDER: Object to the form.

2 THE WITNESS: No, that's definitely
3 not correct. Any set of experiments like this, there
4 is a tremendous amount of data and publications.
5 That's why technical reports are issued so that all
6 that data can be made available.

7 Then you take whatever part you think you
8 can get published and attempt to publish it. She
9 does not present anywhere near the -- all the -- no
10 editor would let her put in all the data that's in
11 the technical report because that would take up too
12 much space.

13 BY MR. GILL:

14 Q. But the peer reviewers in JINC felt she had
15 sufficient data to support the conclusions that the
16 cigarette smoke was weakly carcinogenic in her study,
17 correct?

18 MR. PURDY: Object to the form.

19 THE WITNESS: I haven't seen the
20 reports. The process is they write the report and
21 then the editor has to decide whether he accepts that
22 or not, let's the author revise it and so forth.

23 So for all I know the two -- I don't know
24 how many JINC uses to edit their papers, but I don't
25 know, in fact, all of them or none of them did

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1 support that but it's likely some of them did or it
2 wouldn't have been published.

3 BY MR. GILL:

4 Q. The whole process of peer review is to provide
5 some degree of credibility with respect to the
6 research methodology and the findings that the author
7 claims, correct?

8 MR. ALLINDER: Object to the form.

9 THE WITNESS: That's the goal of it.

10 It frequently fails.

11 BY MR. GILL:

12 Q. And you think it failed in this instance I take
13 it?

14 MR. ALLINDER: Object to the form.

15 THE WITNESS: I do not think the study
16 was positive in any way.

17 BY MR. GILL:

18 Q. But the statement that smoke was concluded to be
19 weakly carcinogenic to mice, that's not included in
20 the blue book, is it?

21 A. In fact, the statement weak carcinogenic -- it's
22 very hard to rank carcinogenic so to say one's
23 strong, one's weak, that's speculation and there is
24 no data to support it so it wouldn't appear in the
25 blue book.

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1 Q. Weakly carcinogenic to mice, those words are not
2 found in the blue book, are they?

3 A. I've read the blue book a number of times but it
4 would not surprise me if something was in there that
5 I had not seen, but I do not remember seeing it.
6 It's a very complicated book.

7 Q. The forward isn't very complicated, is it, the
8 forward written by Dr. Sommers?

9 A. I'm not sure it's called the forward because I
10 keep thinking Henry and Kouri wrote the forward so I
11 would have to look at the book to see, but the two
12 paragraphs that Sommers wrote is pretty simple.

13 Q. Did Sommers summarize his interpretation of
14 Henry's data and findings?

15 A. There is some summarization, but it's very
16 brief. Drs. Henry and Kouri wrote pages and pages of
17 interpretation of their interpretations which follow.

18 Q. But according to Dr. Sommers in his preface,
19 forward, whatever it is to the book, what does he
20 suggest the study showed?

21 A. He suggests the study is negative and I agree
22 with that after looking at the data.

23 Q. How does he suggest that; what does he say?

24 MR. ALLINDER: Object to the form.

25 THE WITNESS: I haven't memorized his

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1 statement, but it's to the effect that no squamous
2 cell carcinomas were produced.

3 I would have to look at it again to tell
4 you exactly what's in there.

5 BY MR. GILL:

6 Q. The statement that no squamous cell carcinomas
7 were produced is definitely a negative interpretation
8 to the data, correct?

9 MR. ALLINDER: Object to the form.

10 THE WITNESS: It's a statement of fact
11 and, in fact, the -- I think Henry and Kouri would
12 agree I hope because I've seen the documents that
13 they produced that that was the goal of the project
14 was to create squamous cell carcinomas from whole
15 cigarette smoke.

16 Now, irregardless of that, it's still a
17 negative study even looking at other tumor types.

18 BY MR. GILL:

19 Q. Well, Sommers in his preface or forward refer to
20 a finding of pulmonary neoplasm on the part of Henry.
21 Do you recall that?

22 A. There are pulmonary neoplasm in those mice but
23 they're not statistically significant.

24 Q. What is a pulmonary neoplasm?

25 A. It's a lung tumor, a type of -- well, it's a
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- 1 general term for all of the tumors of mice.
2 Q. Well, does the words neoplasm mean tumor?
3 A. Essentially.
4 Q. Or does it simply mean abnormal tissue?
5 A. No, it means tumor.
6 Q. And Henry referred to those tumors as adenomas
7 carcinomas, correct?
8 A. There were adenomas and adenoma carcinomas.
9 Q. And Sommers didn't use that term, did he?
10 A. I really don't remember. He only had a couple
11 of paragraphs there.
12 Q. And you don't remember whether in the couple
13 paragraphs Sommers used the term adenoma carcinomas?
14 A. Since they weren't statistically significant,
15 it wouldn't have made sense to put that into those
16 two paragraphs.
17 Q. The question is, do you recall whether he used
18 the term?
19 A. I don't recall, no.
20 Q. Now, adenoma carcinomas are cancers, are they
21 not?
22 A. That's correct.
23 Q. Are all pulmonary neoplasm cancers?
24 A. Yes.
25 Q. So when Sommers used the term pulmonary

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1 neoplasms, it's your interpretation that he's
2 referring to findings of cancer?

3 A. I'm not certain that he used that term. I would
4 have to look at his to -- I could answer your
5 questions better if you would like me to look at his
6 summary.

7 Q. If he did use the term pulmonary neoplasms would
8 you regard it as a reference to cancers?

9 A. A pulmonary neoplasm is a cancer.

10 Q. Are all neoplasms cancerous?

11 A. I just answered yes to that and I still have
12 that opinion.

13 Q. Whether they're pulmonary or otherwise?

14 A. All cancers are neoplasms.

15 Q. And are all neoplasms cancer?

16 A. I think that's correct. No, that's probably
17 not. There is some malignant benign -- the
18 terminology is probably a little more complicated
19 than what I just expressed.

20 Q. Is it possible that neoplasm is a broader term
21 than cancer?

22 A. Possible.

23 Q. Such that some neoplasms might not be cancerous?

24 A. All these terms are used very roughly and so
25 people start getting into the exact name of the

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1 cancer and whether it's benign or malignant.

2 Q. Is adenoma carcinoma a more specific piece of
3 terminology relative to cancer than neoplasm?

4 A. Yes, it is. It's a specific type of neoplasm.

5 Q. So Dr. Sommers chose to use a broader term than
6 adenoma carcinoma to describe Dr. Henry's findings of
7 adenoma carcinomas in the mice?

8 MR. ALLINDER: Object to the form.

9 THE WITNESS: I would have to read
10 that again and then listen to your question to give a
11 good answer to that.

12 BY MR. GILL:

13 Q. Let's put it this way: If Dr. Sommers used the
14 term neoplasm instead of the term adenoma carcinoma
15 he was then using a broader term than the findings
16 Dr. Henry would have supported, correct?

17 MR. ALLINDER: Object to the form.

18 THE WITNESS: It's still the same
19 question. It's a broader term than adenoma carcinoma
20 which is the type of tumor that they found in the
21 mice.

22 BY MR. GILL:

23 Q. And Dr. Henry wasn't able to get her paper
24 published until some two years after the CTR issued
25 it's blue book, correct?

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1 MR. ALLINDER: Object to the form.
2 Misstates the facts.

3 THE WITNESS: I don't know when she
4 wrote it or submitted it, but it's frequently that
5 the technical report is written prior to writing the
6 publication.

7 But Dr. Henry and Kouri as far as I know
8 could have written the paper much earlier than that
9 if they had chose to.

10 BY MR. GILL:

11 Q. Do you recall the blue book was issued in 1984
12 and the paper in JNCI by Drs. Henry and Kouri
13 appeared in '96.

14 A. That's true, but I don't know if that had any
15 effect on the timing of the paper. The paper could
16 have been delayed for a number of reasons.

17 It may have been rejected a few times. The
18 Journal may not have had a place to publish it.

19 So there is a number of reasons why there may
20 have been that delay.

21 Q. And according to Dr. Henry and Dr. Kouri Mr.
22 Finnegan had editing authority with respect to the
23 paper they submitted to JNCI?

24 MR. ALLINDER: Object to the form.

25 THE WITNESS: I don't think she said

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1 that. I think she said they had that for the
2 technical report; drafts of the technical report is
3 how I remember her language.

4 But I don't think -- I don't know. I would
5 have to look at that to be absolutely certain, but my
6 memory of that is that she alleged that based on the
7 technical report.

8 BY MR. GILL:

9 Q. Have you seen any documents that indicated that
10 CTR retained the contractual right to approve any
11 paper that Dr. Henry submitted for publication --

12 MR. ALLINDER: Object to the form.

13 BY MR. GILL:

14 Q. -- with respect to these mice inhalation
15 studies?

16 A. I looked at many of those documents and I can't
17 think specifically if that document was among them,
18 but I would assume that they had -- it was a contract
19 and that's a standard format.

20 Q. So whatever Dr. Henry said even in the published
21 paper would have been subject to the approval of CTR?

22 MR. ALLINDER: Object to the form.

23 THE WITNESS: I don't know
24 specifically. I didn't read the -- I didn't look for
25 all the contracts and read them with that specific

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1 point in mind, but I would assume being a contract
2 it's typical that you submit your paper for the
3 sponsors's approval before you submit it.

4 BY MR. GILL:

5 Q. And Dr. Henry and Dr. Kouri were originally
6 under contract with CTR to do a far broader group of
7 lifetime experiments with these mice than the ones --
8 than the one that was actually completed?

9 MR. ALLINDER: Object to the form.

10 THE WITNESS: They, in fact, completed
11 a large number of other studies as well, some of
12 which are in the technical report, many of which had
13 already been published, and they're in the back of
14 the technical report and --

15 BY MR. GILL:

16 Q. But CTR canceled a number of them?

17 A. I'd like to finish. The plan was to do some
18 other studies and the technical report says that some
19 of those future studies were not done.

20 Q. And Dr. Henry felt that those future studies
21 would be quite important, did she not?

22 A. According to her affidavit, that's, in fact, the
23 case.

24 Q. And the future studies, the ones that were
25 canceled, were studies that were going to

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1 specifically address dose and types of cigarettes and
2 things of that nature that would be more specific to
3 tobacco?

4 MR. ALLINDER: Object to the form.

5 THE WITNESS: I think these studies
6 were specific to tobacco and I think the plan was to
7 develop a model so that a whole variety of different
8 things could be determined using that model.

9 BY MR. GILL:

10 Q. And the whole variety of different things that
11 could be determined with the model would eventually
12 include reactions to smoke from specific types of
13 cigarettes, specific dosages of cigarettes, things of
14 that nature, correct?

15 MR. ALLINDER: Object to the form.

16 THE WITNESS: Until those are designed
17 I can't say that -- you know, it's always difficult
18 to predict the future, but the advantage of a model
19 was sort of any question about the issue could be
20 tested in that model if a good model could be
21 developed.

22 BY MR. GILL:

23 Q. But those future experiments were canceled by
24 CTR before Dr. Henry even provided CTR with her final
25 report from the lifetime inhalation study, true?

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1 MR. ALLINDER: Object to the form.

2 THE WITNESS: I didn't look at the
3 exact timing of all that, but definitely since it's a
4 contract they had to file quarterly reports.

5 So the findings of the experiment were well
6 known at CTR long before the technical report came
7 out.

8 The technical report was delayed and
9 another contract had to be written to even get the
10 technical report written, so -- but the findings were
11 known. They had to file quarterly or fairly frequent
12 reports of what their findings were.

13 BY MR. GILL:

14 Q. So initially there was a broad group of
15 experiments that were planned based upon mice
16 inhalation work, correct?

17 MR. ALLINDER: Object to the form.

18 THE WITNESS: There was a fairly
19 large series of experiments, many of which were done.

20 BY MR. GILL:

21 Q. And then in the course of reporting to CTR on
22 the result of work already underway at some point in
23 time a number of those future projects were canceled,
24 correct?

25 MR. ALLINDER: Object to the form.

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1 THE WITNESS: It appears to me and
2 it's listed in the technical report that some of
3 these future studies were canceled.

4 Q. And originally Dr. Henry and Dr. Kouri were
5 working with Dr. Creisher of CTR, correct?

6 MR. ALLINDER: Object to the form.

7 THE WITNESS: That's one of the
8 people. That was the person from the sponsor who
9 they had the most contact with and they say in their
10 affidavit as well.

11 BY MR. GILL:

12 Q. And Dr. Creisher was fired from his position
13 with CTR without notice?

14 MR. ALLINDER: Object to the form.

15 THE WITNESS: That's what they
16 allege. I don't know what happened to Dr. Creisher.
17 He left and -- I thought that was an interesting part
18 of the affidavit because I wouldn't have expected
19 them to give them notice.

20 I don't know why Microbiological Associates
21 had to have notice, but I don't know what happened to
22 Dr. Creisher specifically.

23 BY MR. GILL:

24 Q. Have you seen any reports of Dr. Creisher?

25 A. I've seen so many documents that I would hate to

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1 say no when it seems like I have seen something.
2 I saw a short -- I have seen a short -- a fairly
3 short two or three page type affidavit from Dr.
4 Creisher.

5 Q. That was sworn testimony?

6 MR. ALLINDER: Object to the form.

7 BY MR. GILL:

8 Q. It's in an affidavit, correct?

9 MR. ALLINDER: Object to the form.

10 THE WITNESS: To the best of my
11 recollection that's all I can think of.

12 BY MR. GILL:

13 Q. And in that affidavit Dr. Creisher indicated
14 that there was intense pressure at CTR to abort the
15 MA mice inhalation work, correct?

16 MR. ALLINDER: Object to the form.

17 THE WITNESS: I told you I have a hard
18 time remembering if I've actually seen this
19 affidavit, so I'm certainly going to have a hard time
20 being very definitive about what's in it.

21 BY MR. GILL:

22 Q. This doesn't refresh your recollection what I've
23 told you?

24 A. No, it doesn't.

25 Q. Do you recall Dr. Creisher indicated that he was
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1 fired at CRT because he persisted with the notion
2 that the MA mice inhalation projects should be
3 continued?

4 MR. ALLINDER: Object to the form.

5 THE WITNESS: Some of this sounds a
6 little bit familiar, but I can't -- I'm not going to
7 be very good at recalling that.

8 I remember the tone of it now, that it
9 seemed like a very angry individual and that must be
10 the one.

11 BY MR. GILL:

12 Q. The tone of Dr. Creisher's affidavit was that
13 Mr. Ramm at CTR had insisted that those projects be
14 curtailed, that's what Dr. Creisher stated, correct?

15 MR. ALLINDER: Object to the form.

16 THE WITNESS: I honestly don't
17 remember the details of Dr. Creisher's affidavit.

18 BY MR. GILL:

19 Q. Now, you remember who Mr. Ramm is, don't you?

20 A. I remember we have talked about him today.

21 Q. He was the chief executive officer of CTR in the
22 seventies and the former general counsel of one of
23 the tobacco companies?

24 MR. ALLINDER: Object to the form.

25 THE WITNESS: I don't remember that

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1 specifically, but I'll take your word for it.

2 BY MR. GILL:

3 Q. Now, this appeared to be more than work that MA
4 was conducting with regard to seeking a model for the
5 proliferation of lung cancer in mice based upon
6 exposure to tobacco smoke, true?

7 A. Any model -- model is badly needed and it is --
8 would have been an extremely important model had it
9 been positive.

10 The other problem with it is it's not going to
11 be a very good model even if it's weakly
12 carcinogenic; even if that would be something that a
13 scientist could decide, it's so weak I think it's
14 negative. But if you decided it was just weak, it's
15 still not a good model.

16 Q. Well, the researchers thought that their
17 findings were significant, correct?

18 A. Drs. Henry and Kouri thought.

19 Q. And Dr. Creisher?

20 A. Could I finish?

21 Q. The only question was, do the researchers think
22 that?

23 A. The researchers think that in their affidavits,
24 yes.

25 Q. And Dr. Creisher wanted that work to be pursued,

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1 true?

2 MR. ALLINDER: Object to the form.

3 THE WITNESS: That's possible.

4 BY MR. GILL:

5 Q. And Dr. Creisher alleged that he got fired
6 because he continued to persist that that work should
7 be pursued?

8 MR. ALLINDER: Object to the form.

9 THE WITNESS: I don't know why he got
10 fired and that may be what he alleged.

11 BY MR. GILL:

12 Q. And after Dr. Creisher got fired the people at
13 MA, Drs. Henry and Kouri, began to deal with Dr.
14 Gardner, correct?

15 A. That's what they allege.

16 Q. And lawyers from CTR, correct?

17 MR. ALLINDER: Object to the form.

18 THE WITNESS: The only one I've seen
19 them mention is Mr. Finnegan.

20 BY MR. GILL:

21 Q. And Dr. Henry states that she had never been
22 involved in her career in dealing with lawyers while
23 conducting research, correct?

24 A. If that's what it says in her affidavit then it
25 must be what she said.

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- 1 Q. Now, the work that Drs. Henry and Kouri were
2 doing certainly came within the subject of all phases
3 of tobacco and health as set forth in the Frank
4 Statement, correct?
- 5 A. Within the framework of all phases?
- 6 Q. Yes.
- 7 A. Any -- I guess any project would come under that
8 broad definition.
- 9 Q. Not any kind of a project, but a project having
10 to do with tobacco and health.
- 11 A. There is many other projects that relate to that
12 that might not be directly look like they're related
13 to tobacco and health.
- 14 Q. But this particular project appears to be
15 directly related to tobacco and health, does it not?
- 16 A. This project they're trying to develop an animal
17 model to look at one aspect of that very complicated
18 issue.
- 19 Q. To see if the animal would develop some form of
20 cancer after being exposed to cigarette smoke?
- 21 A. They were attempting to grow squamous cell
22 carcinoma in the rodent.
- 23 Q. And the researchers thought they had produced
24 adenoma carcinomas in the lungs of the mice?
- 25 A. Dr. Henry and Dr. Kouri say that in their

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1 affidavits.

2 Q. And while they had not achieved statistical
3 significance with respect to a ninety-five percent
4 confidence rate, they came very close to that rate,
5 did they not?

6 MR. ALLINDER: Object to the form.

7 THE WITNESS: They did hundreds of
8 comparisons, and one of those comparisons came in at
9 point zero seven, and there is nothing in statistics
10 as close, and that does not make a week carcinogenic.

11 BY MR. GILL:

12 Q. But point zero seven means that there is a
13 ninety-five percent chance that the findings are
14 other than by chance correct?

15 MR. ALLINDER: Object to the form.

16 THE WITNESS: That's correct and
17 that's why people usually pick at most point zero
18 five, and usually point zero five because that is a
19 allowing for a lot of potential problems.

20 BY MR. GILL:

21 Q. But there are a lot of people who would be
22 willing to buy stock in a particular company if they
23 could count on the fact that they had a ninety-three
24 percent likelihood of making money, true?

25 MR. ALLINDER: Object to the form.

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1 THE WITNESS: I think buying stock in
2 a company is totally unrelated to the statistical
3 design of a scientific experiment and -- so I can't
4 really make any kind of analogy there.

5 BY MR. GILL:

6 Q. But with respect to a finding of ninety-three
7 percent reliability in an experiment, a further study
8 along the same lines might well put the results over
9 the ninety-five percent threshold, true?

10 MR. ALLINDER: Object to the form.

11 THE WITNESS: No one can predict the
12 future. These studies are -- that's why we do them
13 is to find out the answer at the end, and that would
14 never be known until it was.

15 BY MR. GILL:

16 Q. But CTR cut off the funds for any such studies,
17 correct?

18 MR. ALLINDER: Object to the form.

19 THE WITNESS: I'm trying to think of
20 the -- how that funding went. I guess it's fair to
21 say that CTR decided that further studies of this
22 model would not be useful.

23 BY MR. GILL:

24 Q. And Dr. Sommers in commenting upon these
25 findings in the blue book focus solely on the

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1 negative aspect of those findings, correct?

2 MR. ALLINDER: Object to the form.

3 The document speaks for itself.

4 THE WITNESS: In my opinion he
5 focused on the facts so I agree completely with his
6 statement. I've read it a number of times to try to
7 see why people are unhappy about it and it seems to
8 me to be an accurate representation of what --

9 BY MR. GILL:

10 Q. Well you find it to be technically true,
11 correct?

12 A. Technically true counts for a lot in science.

13 Q. But Dr. Sommers counted on the part of the glass
14 that was empty more than on the part of the glass
15 that was full, correct?

16 A. I didn't see any part of the glass that was
17 full.

18 Q. Well, Dr. Henry found the glass to be
19 ninety-three percent full, did she not?

20 MR. ALLINDER: Object to the form.

21 THE WITNESS: Dr. Henry picked one
22 aspect of the data and she chose a point that most
23 scientists would not agree with.

24 BY MR. GILL:

25 Q. And because the glass was ninety-five percent

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1 full Dr. Sommers interpreted it as a negative study?

2 MR. ALLINDER: Object to the form.

3 THE WITNESS: No. Dr. Sommers using
4 standard scientific methods made a correct method of
5 this study.

6 BY MR. GILL:

7 Q. That statistical significance had not been
8 achieved at the ninety-five percent level?

9 MR. ALLINDER: Object.

10 THE WITNESS: It's more than that,
11 but in that particular aspect of the data you really
12 can't just say, well, now I'm going to go to zero
13 seven or zero eight or zero ten or zero whatever.

14 BY MR. GILL:

15 Q. But in your mind there is really no difference
16 between scientific findings at the ninety-four
17 percent reliability level and other findings at a
18 five percent level --

19 MR. ALLINDER: Object to the form.

20 BY MR. GILL:

21 Q. -- of reliability?

22 A. It's not -- that's a very complicated question
23 from a scientific standpoint, and you're not
24 comfortable with data that's marginal even if it's
25 statistically significant.

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1 Q. And if -- if this information was marginal with
2 respect to its statistical significance, CTR chose
3 not to follow up with further studies that might have
4 solidified the reliability of that data, correct?

5 MR. ALLINDER: Object to the form.

6 THE WITNESS: The data is so marginal
7 that this would not be a good model if you could
8 repeat it.

9 But I really view the data isn't
10 marginally. The data is soundly negative.

11 BY MR. GILL:

12 Q. But once again the peer reviewers or the editors
13 at JNCI felt that Dr. Henry's findings were
14 supportable enough to include her conclusions that
15 the smoke was weakly carcinogenic to the mice,
16 correct?

17 MR. ALLINDER: Objection. Asked and
18 answered.

19 THE WITNESS: I thought it was
20 significant too that CTR approved that publication,
21 so I thought that was very -- the publication
22 really -- I don't think it was positive and yet CTR
23 allowed that to be published.

24 BY MR. GILL:

25 Q. And we don't know what CTR required the authors
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1 to take out of the publication before they approved
2 it, true?

3 MR. ALLINDER: Object to the form.

4 THE WITNESS: I've never heard Drs.
5 Kouri or Henry that anything was taken out of the --
6 BY MR. GILL:

7 Q. Have you seen anything on the subject at all
8 other than the claim that it was edited?

9 MR. ALLINDER: Object to the form of
10 the question.

11 THE WITNESS: I've seen their
12 affidavits and they don't allege any such thing
13 happened with the paper that I can remember.
14 BY MR. GILL:

15 Q. Now, have you seen other documents in this case
16 in which a Mr. Yaman who was at one point the chief
17 executive officer of CTR refer to CTR as the best
18 insurance that the tobacco industry could buy?

19 A. I've seen -- in fact, I think even this exhibit,
20 3339, has such a statement in it. So I've seen that
21 from a number of -- in a number of different
22 documents.

23 Q. You've seen more than one tobacco industry
24 representative comment that CTR was the best
25 insurance that the tobacco industry could buy; is

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1 that correct?

2 MR. ALLINDER: Object to the form.

3 THE WITNESS: I have because that good
4 science reported the way it should be reported is the
5 best insurance you can buy.

6 BY MR. GILL:

7 Q. And the -- strike that. And Mr. Yaman in the
8 same notes indicated that without CTR the tobacco
9 industry would need to invent CTR or be dead. Do you
10 recall that?

11 MR. ALLINDER: Object to the form.

12 THE WITNESS: I would have to look at
13 it to be certain that's exactly what it says. I
14 remember words similar to that effect.

15 BY MR. GILL:

16 Q. Well, when you read that assessment of CTR by
17 Mr. Yaman did you believe that you were reading a
18 description of CTR that suggested that the industry
19 would be well served if CTR produced good research?

20 A. Yes, I did because any industry that would try
21 to have bad research you certainly couldn't view that
22 as good insurance.

23 Q. And you didn't see anything in Mr. Yaman's
24 comments that was cynical with respect to the conduct
25 in and operation of CTR relative to the public

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1 interest?

2 MR. ALLINDER: Object to the form.

3 THE WITNESS: No, I didn't. I
4 wouldn't expect him to be cynical with respect to
5 that.

6 BY MR. GILL:

7 Q. Why do you suppose Mr. Yaman felt that the
8 tobacco industry needed to buy insurance?

9 MR. ALLINDER: Objection to the form.

10 THE WITNESS: I have no way of knowing
11 and I don't know how he used that terminology so it
12 would be very difficult for me to make anything out
13 of it.

14 BY MR. GILL:

15 Q. Another interpretation of Mr. Yaman's comment is
16 that the tobacco industry had bought and paid for the
17 services of CTR, correct?

18 MR. PURDY: Object to the form.

19 MR. ALLINDER: Object to the form.

20 THE WITNESS: I don't have any way of
21 knowing what he meant by that statement so I really
22 can't make that kind of assessment.

23 BY MR. GILL:

24 Q. Well, you've already made your own assessment of
25 what you thought he meant, correct?

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1 MR. ALLINDER: Object to the form.

2 MR. PURDY: Misstates his testimony.

3 BY MR. GILL:

4 Q. Didn't you tell us what you already thought of
5 Mr. Yaman in using that language?

6 MR. ALLINDER: Same objection.

7 THE WITNESS: I attempted to because
8 you asked me and that's what I'm trying to do is
9 answer your questions.

10 BY MR. GILL:

11 Q. And having told me your interpretation as an
12 expert in this case who is attempting to let the
13 chips fall where they may it is another possible
14 interpretation that Mr. Yaman was suggesting that the
15 CTR had been bought and paid for by the cigarette
16 industry?

17 MR. ALLINDER: Object to the form.

18 The first part of that question misstates testimony.

19 THE WITNESS: I really can't. I don't
20 know what Mr. Yaman meant by that, but I can't
21 believe that anyone would think -- any intelligent
22 person would think that buying and paying for bad
23 research would somehow be good insurance.

24 BY MR. GILL:

25 Q. If that's what the industry had done, it was

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1 wrong, true?
2 MR. ALLINDER: Object to the form.
3 THE WITNESS: What do you mean if
4 that's what the industry had done?
5 BY MR. GILL:
6 Q. If the industry had simply set up CTR in order
7 to provide it with insurance by promoting the concept
8 that the controversy with respect to the causal
9 connection was still open, that would be wrong,
10 true?
11 MR. PURDY: Object to the form.
12 THE WITNESS: If any organization
13 spent money to create bad science that would be
14 wrong.
15 BY MR. GILL:
16 Q. And if the industry created CTR primarily to
17 operate as a public relations arm for the industry
18 that would be wrong too, correct?
19 MR. ALLINDER: Object to the form.
20 THE WITNESS: Your words -- primarily,
21 do you mean only, do you mean --
22 BY MR. GILL:
23 Q. You understand what primarily means, don't you,
24 Dr. Hamm?
25 A. I don't know what you mean in a lot of words
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1 that you use, and that's why I'm asking you the
2 question.

3 Q. Well, if the industry set up CTR --

4 MR. ALLINDER: Excuse me. You told
5 him at the beginning of this deposition to ask for
6 clarification.

7 MR. GILL: That's true, and I'm trying
8 to give you clarification.

9 MR. ALLINDER: Your response is
10 somewhat argumentative.

11 BY MR. GILL:

12 Q. If the industry set up CTR mainly to operate as
13 a public relations vehicle for the industry, that
14 would be wrong, true?

15 A. Good science can be viewed as good public
16 relations, so we would have to discuss these terms to
17 know what you mean by that.

18 You seem to think all public relations are
19 negative. I think good science is good public
20 relations.

21 I work at a scientific organization. We do all
22 kinds of public relations and it relates to our
23 science. We view it as good public relations.

24 Q. Listen again and keep in mind the Frank
25 Statement. If the industry set up CTR mainly to

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1 operate as a public relations vehicle to advance the
2 interests of the cigarette industry that would be
3 wrong, wouldn't it?

4 MR. ALLINDER: Object to the form.
5 Asked and answered.

6 BY MR. GILL:

7 Q. Based upon the pledges in the Frank Statement?

8 MR. ALLINDER: Same objection.

9 THE WITNESS: I think what the
10 industry attempted to do in the Frank Statement and
11 what they did do was set up CTR to provide good
12 science, and then if that good science results in
13 good public relations I think that's a good thing.
14 That's not a negative to me.

15 BY MR. GILL:

16 Q. Is it all right as far as you're concerned if
17 the main purpose of establishing CTR was to conduct
18 public relations on behalf of the cigarette industry?

19 MR. ALLINDER: Object to the form.
20 Asked and answered.

21 THE WITNESS: I'm having difficulty
22 answering because I don't think I could communicate
23 what I'm trying say in that I think good science and
24 good public relations are very closely related. So I
25 can't separate them as to two distinct intents.

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1 BY MR. GILL:

2 Q. So you think that good science and good public
3 relations are very closely related?

4 MR. ALLINDER: Object to the form.

5 THE WITNESS: Just as I think bad
6 science is not good public relations.

7 BY MR. GILL:

8 Q. So you would tend to see public relations as
9 being very synonymous with science?

10 A. I didn't say that.

11 MR. ALLINDER: Object to the form.

12 THE WITNESS: I said good science can
13 result in good public relations, bad science cannot.

14 BY MR. GILL:

15 Q. Do you appreciate a difference in the
16 disciplines, the scientific discipline, on the one
17 hand, public relations on the other?

18 MR. ALLINDER: Object to the form.

19 THE WITNESS: Well, as a scientist who
20 works in organizations where we do a lot of public
21 relations, it's probably harder for me to see this
22 distinct separation than some people who don't see it
23 that way.

24 BY MR. GILL:

25 Q. Is it your understanding that people who work in
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1 public relations for a living tend to try to put a
2 spin on information?

3 MR. ALLINDER: Object to the form.

4 THE WITNESS: In the area of science
5 it's always up to the scientist to make sure that
6 spin is appropriate to the science.

7 So we have -- every place I have worked at
8 has had public relations people, and the process is
9 not one where they can put a spin on our data.
10 That's totally incorrect.

11 BY MR. GILL:

12 Q. Listen to the question, Dr. Hamm. The question
13 deals with public relations. Are you with me?

14 A. I'm trying very hard to be with you.

15 MR. ALLINDER: Excuse me. I object.

16 BY MR. GILL:

17 Q. Is it your understanding that people who work
18 for a living in public relations attempt to put a
19 spin on information?

20 MR. ALLINDER: Object to the form.

21 THE WITNESS: The people that I work
22 with in public relations, and I've worked with them
23 in every organization that at I've worked for,
24 attempted to communicate the data I was providing
25 them in an appropriate manner.

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1 BY MR. GILL:
2 Q. Without putting any spins on the data?
3 MR. ALLINDER: Object to the form.
4 THE WITNESS: We would have to discuss
5 your definition of spin I guess because I think any
6 time you -- you cannot report scientific data and put
7 a spin on it per se.
8 BY MR. GILL:
9 Q. You cannot?
10 A. In the way I think you're trying to get me to
11 say.
12 Q. So Mr. Saun, for instance, would not have been
13 able to report any scientific data on behalf of CTR
14 and put a spin on it?
15 MR. ALLINDER: Object to the form.
16 THE WITNESS: Not unless he had the
17 data and they were valid, because the next step is
18 that data is now out into the public. So if that
19 data is incorrectly reported then the next step is
20 someone is going to clobber their reputation.
21 BY MR. GILL:
22 Q. If someone finds out that the data has been
23 spun --
24 MR. ALLINDER: Object to the form.
25 BY MR. GILL:

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1 Q. Correct?

2 A. That's pretty easy to do if you decide to put a
3 spin on some piece of important data, and people are
4 looking for that.

5 So in the scientific area, it may be different
6 than other areas. I don't know, but people are very
7 careful when they put out information to be careful
8 they can't be accused of doing such a thing.

9 Q. Now, just to be fair to you, let's go outside of
10 your personal experience with public relations in
11 your jobs over the years, all right? You're how old?

12 A. Fifty-four.

13 Q. During your lifetime have you ever been exposed
14 to a public relations campaign as far as you know?

15 A. I suppose I have.

16 Q. Is it your understanding that the people
17 conducting the public relations campaigns that you
18 have been exposed to were attempting to put some spin
19 on information?

20 MR. ALLINDER: Object to the form.

21 THE WITNESS: I don't know. I haven't
22 worried about what they're trying to do. But I
23 definitely in each of these cases have watched for
24 that, and if they're not careful how they put that
25 spin, then they lose me pretty quick.

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1 BY MR. GILL:

2 Q. But you come from the perspective that you don't
3 know whether any public relations people have tried
4 to put any spins on any public relations campaigns
5 that have been directed toward you?

6 MR. ALLINDER: Object to the form.

7 THE WITNESS: There has never been a
8 public relations that has tried to put a spin on
9 things? I'm certain they probably have.

10 BY MR. GILL:

11 Q. And to the extent public relations have
12 occasionally tried to put a spin on things, you see
13 that as the same thing as something that is done in
14 reporting science?

15 MR. ALLINDER: Object to the form.

16 THE WITNESS: No, I never said that.
17 I said good science properly reported can be good
18 public relations. You're the one that seems to think
19 that everybody puts a spin on everything.

20 I honestly think that it would be difficult
21 for CTR to put a spin on their data because people
22 are watching them to see if that is, in fact, what
23 they're doing and the scientific advisory would be
24 very unhappy with that kind of activity.

25 BY MR. GILL:

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1 Q. But the spin Dr. Sommers put on the MA data was
2 that nothing had been found of significance, correct?

3 MR. PURDY: Object to the form.

4 MR. ALLINDER: Object to form.

5 Misstates the facts.

6 THE WITNESS: He did not put any spin
7 on it at all. He reported the facts, and I think
8 when you read the book you can see that what he says
9 is absolutely true.

10 And I think that that's why he's got to be
11 careful not to put the spin on it because the data is
12 there; any scientist can look at what he says, then
13 go look at the data, and they would have him captured
14 on this spin if, in fact, he tried such a thing.

15 BY MR. GILL:

16 Q. Do you know what the cigarette companies have
17 determined about the causal link between smoking and
18 cancer based upon their own animal inhalation
19 studies?

20 MR. ALLINDER: Object to the form.

21 THE WITNESS: No, I have not seen the
22 internal documents of the companies.

23 MR. GILL: Thank you. Nothing
24 further.

25 (Recess taken.)

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1 MR. GILL: I do have something else.
2 Would you mark this please?
3 (Plaintiffs' Deposition Exhibit No. 3341 - PM Osdene
4 memo - marked for identification.)
5 BY MR. GILL:
6 Q. You've seen Exhibit 3341 in preparation for this
7 deposition?
8 A. I have.
9 Q. This is a memo from Mr. Osdene to the file?
10 A. That's what it appears to be.
11 Q. Mr. Osdene is commenting on research conducted
12 or sponsored by CTR relating to Microbiological
13 Associates, correct?
14 A. I need a minute to look at this so I can refresh
15 my memory of which one I'm looking at.
16 Q. The fourth line mentions Microbiological
17 Associates. Do you see that?
18 A. I would like to read it please. It's not very
19 long. Okay.
20 Q. It concerns Microbiological Associates research,
21 doesn't it?
22 A. It appears to.
23 Q. Mr. Osdene suggests that the approaches to the
24 project while not always consistent makes scientific
25 sense?

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1 A. I'm sorry. Where are you reading from? Okay.
2 That's what it says in this memo.

3 Q. And he says "Nevertheless, I would strongly
4 recommend that tighter control be exercised over the
5 proliferation of this contract?"

6 A. I see that.

7 Q. The date of his memo is January 10 of '78?

8 A. That's correct.

9 Q. Sometime after that date Dr. Creisher was fired,
10 correct?

11 MR. ALLINDER: Objection. Misstates
12 the facts.

13 THE WITNESS: I don't even know that
14 he was, in fact, fired.

15 BY MR. GILL:

16 Q. And sometime after January of '78 the
17 Microbiological Associates research contract was cut
18 back?

19 MR. ALLINDER: Objection to the form.

20 THE WITNESS: I don't even know the
21 exact date of that either.

22 BY MR. GILL:

23 Q. If it happened after January of '78 then it
24 would be subsequent to Osdene's suggestion, true?

25 A. I guess this went to the file, so I --

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1 MR. ALLINDER: He just asked you about
2 the chronological sequence.

3 THE WITNESS: I know, but I'm --

4 MR. ALLINDER: Read the question back.
5 (Record read.)

6 THE WITNESS: It would be after this
7 and I guess the word is suggestion.

8 BY MR. GILL:

9 Q. The last paragraph in the first page of this
10 exhibit refers to a grant to a Dr. Abood with respect
11 to developing a clinically acceptable antagonist to
12 nicotine. Do you see that?

13 A. Yes.

14 Q. Osdene says this would have the potential of
15 putting the tobacco manufacturers out of business.
16 Do you see that?

17 A. I see that.

18 MR. GILL: Would you mark this?
19 (Plaintiffs' Deposition Exhibit No. 3342 - Felton
20 document - marked for identification.)

21 BY MR. GILL:

22 Q. Do you know whatever happened to Dr. Abood's
23 research on nicotine?

24 A. I have no idea.

25 Q. Showing you Exhibit 3342. This is a document
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1 that is apparently reporting a visit to Canada and
2 U.S. by a D. G. Felton. Do you see that on the face
3 page?
4 A. That's what the face page says.
5 Q. And apparently Dr. Felton visited a number of
6 tobacco companies and other entities in October of
7 '79 during this visit. Would you assume that to be
8 the case?
9 A. Yes.
10 Q. The second page lists the places he visited.
11 Would you turn to page 300. The -- it's labeled page
12 48 of the document.
13 A. Okay.
14 Q. At this point in the document Dr. Felton is
15 summarizing his visit at the Council for Tobacco
16 Research. Do you see that?
17 A. I do.
18 Q. Mr. Yaman is now indicated as the president of
19 that corporation, correct?
20 A. That's what's on this page.
21 Q. The third paragraph on this page talks about the
22 reasons why CTR did not continue their grant to Leo
23 Aboud. There is a general nervousness in the U.S.
24 industry and then it goes on. Would you read that?
25 A. Okay.

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1 Q. Mr. Osdene's memo to the file of January of '78
2 concerning Dr. Abood's research, correct?

3 A. That's correct.

4 Q. And this report is October of '79?

5 A. That's what it says.

6 Q. And between's Osdene's memo and Felton's report
7 CTR had discontinued their grant to Dr. Abood on the
8 subject of nicotine?

9 A. I don't know when. It says they didn't continue
10 it in Dr. Felton's report. I don't know when -- I
11 don't know whether it was after this other one or
12 when it occurred. I have no idea when it was
13 discontinued.

14 Q. And Mr. Osdene communicated to his superiors
15 that he felt that Dr. Abood's research if successful
16 would have the effect of putting the tobacco
17 companies out of business, true?

18 MR. ALLINDER: Object to the form.

19 THE WITNESS: That's what he said.

20 BY MR. GILL:

21 Q. And the research was stopped?

22 MR. ALLINDER: Object to the form.

23 THE WITNESS: It says in this -- we
24 have a report from somebody in England, and these two
25 pieces of paper, that's what it says.

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1 BY MR. GILL:

2 Q. And Dr. Osdene also suggested that proliferation
3 of the MA contract should be tightly controlled,
4 correct?

5 A. That's what he says.

6 Q. And it was after January of '78, correct?

7 MR. ALLINDER: Object to the form.

8 THE WITNESS: I don't know what he
9 means by tighter control, whether monetary issues.

10 There are a variety of issues so I don't
11 know what happened and whether it was because of this
12 memo.

13 Q. Tighter control suggests restrictions, do they
14 not?

15 MR. ALLINDER: Form.

16 MR. PURDY: Form.

17 THE WITNESS: It suggests a variety
18 of situations, so --

19 BY MR. GILL:

20 Q. But you know that a number of contracts that MA
21 had with CTR were canceled --

22 MR. ALLINDER: Object to the form.

23 BY MR. GILL:

24 Q. -- of a mice inhalation nature?

25 MR. ALLINDER: Object to the form.

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1 Misstates the facts.

2 THE WITNESS: I don't think anything
3 was canceled. Further funding was not given for some
4 projects.

5 BY MR. GILL:

6 Q. Dr. Henry indicated in her affidavit that
7 projects that are -- that already had been approved
8 were subsequently canceled, correct?

9 MR. ALLINDER: Object to the form.

10 THE WITNESS: I don't know that what
11 she has alleged is true or not.

12 BY MR. GILL:

13 Q. But realizing you don't know whether or not it's
14 true or not, she alleges this occurred in 1978 or
15 thereafter, does she not?

16 MR. ALLINDER: Object to the form.

17 THE WITNESS: I guess sometime in that
18 relative time frame, but I really don't know if it
19 was before this or after this or -- I don't know if
20 anything was canceled.

21 BY MR. GILL:

22 Q. It's quite a coincidence, is it not?

23 MR. ALLINDER: Object to the form.

24 THE WITNESS: I don't see the
25 coincidence. I don't know what he meant by tighter

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1 control.

2 MR. GILL: That's all I have as long
3 as you don't see the coincidence.

4 MR. ALLINDER: Object to the form.
5 Move to strike the last comment. Strike the
6 question.

7 * * *

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C O N F I D E N T I A L
C E R T I F I C A T E

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I, NANCY K. JOHNS, hereby certify that I am
qualified as a verbatim shorthand reporter; that I
took in stenographic shorthand the testimony of
THOMAS HAMM, JR., D.V.M., Ph.D., at the time and
place aforesaid; and that the foregoing transcript
consisting of pages 333 through 603 is a true and
correct, full and complete transcription of said
shorthand notes, to the best of my ability.

Dated at Minneapolis, Minnesota, this 27th
day of September, 1997.

Nancy K. Johns, Notary Public
Hennepin County, Minnesota
My commission expires January 31, 2000.

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C O N F I D E N T I A L

C E R T I F I C A T I O N

I, THOMAS HAMM, JR., D.V.M., Ph.D, the
deponent, hereby certify that I have read the
foregoing transcript consisting of pages 333 through
603, and that said transcript is a true and correct,
full and complete transcription of my deposition
except:

THOMAS HAMM JR., D.V. M. Ph.D.
Deponent

Sworn and subscribed to before me this
day of , 1997.

Notary Public

My commission expire

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